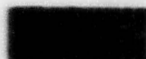


V00558 001
830810-831220 AGENDA/MIN
198312

OPERATION & WORKS COMMITTEE MG.0

INVITATIONS - REGRETS

CITY OF MISSISSAUGA
RETURN TO CENTRAL RECORDS
BOX LABEL


-V88558-

LOCATION LABEL


-98080211-

Public Works Committee

August - 1983

To December - 1983

THE CORPORATION OF THE CITY OF MISSISSAUGA

A G E N D A

PUBLIC WORKS COMMITTEE

WEDNESDAY, AUGUST 10, 1983 AT 9:30 A.M.

COMMITTEE ROOM A

MEMBERS: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield

PREPARED BY: Clerk's Department
DATE: August 8, 1983

COMMITTEE MEMBERS ARE REQUESTED TO CONTACT THE APPROPRIATE DEPARTMENT HEADS
PRIOR TO THE MEETING IF GREATER EXPLANATION OR DETAIL IS REQUIRED WITH REGARD
TO ANY ITEM ON THE AGENDA.

15C/68C

INDEX, PUBLIC WORKS COMMITTEE AGENDA, AUGUST 10, 1983

<u>ITEM #</u>	<u>FILE #</u>	<u>SUBJECT</u>
1.	C.04.07	Lisgar District - Site Development Concept Plan
2.	A.00.02.01	Cash contribution requirement for constructing sidewalks on major roads as a condition of rezoning and site plan approval
3.	F.06.04.02	Traffic Problems - School Zones
4.	C.03.03 F.06.04.02	On-Street Parking in Residential Zones
5.	A.00.02.01	Timing of Walkway construction with residential subdivisions
6.	A.03.04.06	Summary of Unfinished Business

CITY OF MISSISSAUGA

PUBLIC WORKS COMMITTEE

WEDNESDAY, AUGUST 10, 1983
COMMITTEE ROOM A AT 9:30 A.M.

A G E N D A

MATTERS FOR CONSIDERATION:

1. On July 6, 1983, Public Works Committee considered a report dated May 16, 1983, from the Commissioner of Engineering and Works, together with a presentation made by representatives of First City Development Corp. on the Site Development Concept Plan for Lisgar District; lands north of Britannia Road, west of Tenth Line.

The Public Works Committee's recommendation, which was adopted by Council at its meeting held on July 13, 1983, was as follows:

- a) That the concept for the development of up to 500 houses within Phase 1 of Lisgar District, lands north of Britannia Road, west of Tenth Line, as presented to the Public Works Committee at its meeting held on July 6, 1983, and described in a report from the Commissioner of Engineering and Works, dated May 16, 1983, be endorsed;
- b) That the Public Works Committee consider reports at its next meeting:
 - (i) from the Commissioner of Engineering and Works on the length of time that should be set aside to evaluate this "module type" development before further developments of this nature are considered, and
 - (ii) from the City Solicitor, after consultation with Counsel for the Developer, on the legal aspects of mutual ownership and the responsibilities involved with the private roadways within each module.

In connection with this directive, the following reports are now being submitted to the Committee:

- (i) Report dated July 13, 1983, from the City Solicitor, on the legal aspects of mutual ownership and the responsibilities involved.

In his report, the City Solicitor warns of problems that could result from the conveyance of lands subject to restrictions and covenants respecting the private road, from an enforcement and liability and insurance point of view. Mr. Stewart points out that condominium status would better protect the interests of the six individual owners within each module. Mr. Stewart further questions the impact this form of ownership could have on future homeowners given the expectations of the contemporary Canadian homeowner, particularly with respect to fencing and accepted standard municipal services, such as snow plowing, curb garbage pick-up, etc.

August 10, 1983

Item 1 (Continued)

In conclusion, Mr. Stewart recommends:

That the Site Development Concept Plan of a Six Lot Module with private road proposed for the Lisgar District, as currently conceived and framed by the developer, be considered premature and be refused.

- (ii) Report dated August 4, 1983, from the Commissioner of Engineering and Works, on the development proposal and specifically on the length of time that should be set aside to evaluate this type of project before further developments of this nature are considered. The previous report from the Commissioner, Engineering and Works, dated May 16, 1983, referred to in his report dated August 4, 1983, is also attached for the Committee's information.

With respect to the length of the evaluation time, Mr. Taylor recommends a two year period. He feels that this would give Council and staff sufficient time to evaluate such things as the residents reactions to the municipal services and the residents success in providing the difference between this service and their level of expectations. This would also allow for the adequacy of parking, drainage and the public's reaction generally to the scheme to be evaluated.

In conclusion, Mr. Taylor recommends:

That the private road module concept not be approved as presently proposed as it cannot be supported from a legal standpoint. However, if Council wishes to test a private road system on a trial basis in a new development, that the area be limited to 120 lots (20 private streets), and that no further private road development be permitted in the City of Mississauga until such time as the City has had two years in which to evaluate the concept after assumption of the development by City Council.

File: C.04.07
DIRECTION REQUIRED

August 10, 1983

2. Report dated July 25, 1983, from the Commissioner, Engineering and Works, on the City's cash contribution requirement for constructing sidewalks on major roads as a condition of rezoning and site plan approval.

Resolution #32 adopted by Council at its meeting of January 25, 1982, states that all rezoning and site plan applications which have not been approved by Council as of January 25, 1982, be required to pay for the cost of constructing a sidewalk on a major road which is adjacent to the development where no sidewalk exists at the present time.

Mr. Taylor advises that his department has received requests for a deferment of this requirement where the sidewalk is not warranted on the major road at the time his department is processing the application and he feels that it would be in order in such cases to defer the cash contribution until the site plan approval stage.

Mr. Taylor recommends:

1. That payment for constructing a sidewalk on a major road abutting a rezoning application be deferred until site plan approval, in the event that the City's Engineering Department feels that the sidewalk is not warranted at the time of the passing of the rezoning by-law.
2. That a clause worded to the satisfaction of the City's Legal Department be incorporated into the Financial Agreement for the lands being rezoned noting that the payment for constructing a sidewalk on the abutting major road be required as a condition of site plan approval.

A.00.02.01
RECOMMEND ADOPTION

3. Report dated May 18, 1983, from the Commissioner of Engineering and Works, on traffic problems in school zones. This report is in response to Recommendation 413-83 of General Committee, which was adopted by Council on April 11, 1983, "That the Commissioner of Engineering and Works prepare a report for consideration by the Public Works Committee with respect to the implementation of a system whereby signs are erected and flashers activated advising the travelling public that the speed limit is reduced in an area which is a school crossing area, and/or that children are being picked up at that location, similar to systems which are in operation in various states in the U.S.A. and the feasibility of linking such signs with the computerized traffic system.

August 10, 1983

Item 3 (Continued)

In his report, the Commissioner advises that under The Highway Traffic Act, speed limit signs can only be reduced to 40 km/h between 8:00 a.m. and 5:00 p.m. on days on which school is regularly held and then only on sections of roadway immediately adjacent to a school and within 150 meters along the roadway in each direction beyond the limits of the land used for the purposes of the school. The Act further stipulates the size and type of signs that may be used. Mr. Taylor reports that three municipalities in Ontario (London, Burlington and Wasaga Beach) have used the special speed zone signing to reduce speed limits on a roadway adjacent to a school and he describes their experiences.

In conclusion, Mr. Taylor recommends:

- (a) That a system of changeable speed signs on roadways adjacent to schools within the City of Mississauga not be implemented.
- (b) That a system whereby signs are erected and flashers activated for school children at a school crossing or pick up area, not be implemented as it is not permitted under The Highway Traffic Act.

On July 6, 1983, the Public Works Committee deferred consideration of this report until this meeting. A copy of the report was however forwarded to the Traffic Safety Council in the interim for its information.

F.06.04.02
RECOMMEND ADOPTION

- 4. Joint report dated May 18, 1983, from the Commissioner of Engineering and Works and the Acting Commissioner of Building, on On-street parking in residential areas. In March of 1982, the Public Works Committee had discussed the problems and complaints received concerning on-street parking adjacent to multi residential areas and been advised that a Staff Committee of representatives from the Engineering, Building and Planning Departments was reviewing the matter and would be reporting back to them. In addition, in May of 1983, the By-law Committee of Council asked that on-street parking in single family residential areas also be addressed.

In their report, the Commissioner of Engineering and Works and the Acting Commissioner of Building advise that the staff Committee had identified 50 locations on 19 streets where on-street parking is occurring adjacent to multi family residential areas. These situations have been investigated to find out why on-street parking is being used, i.e. two to three vehicles per family, garages being used for storage or other uses, insufficient on-site parking, etc. and a number of options to address the long term parking of vehicles on roadways are outlined.

August 10, 1983

Item 4 (Continued)

The report recommends:

- a) That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified.
- b) Additional parking control staff be provided for enforcement of Recommendation (a) above.
- c) The Planning Department review current parking requirement standards.

Also attached to the Agenda is a copy of a letter from Mr. R. A. McPhail, 1480 Robillard Road, requesting an amendment to By-law 444-79, the City of Mississauga Traffic By-law, to permit overnight parking on City streets when snow removal vehicles are not at work. This letter is referred to the Public Works Committee for its information by Councillor Marland.

On July 6, 1983, the Public Works Committee deferred consideration of this report until this meeting.

C.03.03

F.06.04.02

RECOMMEND ADOPTION

5. Report dated June 15, 1983, from the Commissioner of Engineering and Works, on the timing of the construction of walkways within residential subdivisions.

Mr. Taylor advises that the Urban Development Institute is now suggesting that instead of requiring walkways to be constructed prior to the issuance of the building permits for the abutting lots in order to alert purchasers to their existence, walkways now be constructed following construction of the adjacent residences. With today's reduced sized lots, these walkways are being damaged when the neighbouring houses are constructed.

Mr. Taylor recommends:

- a) That future Servicing Agreements for residential plans of subdivisions involving the construction of walkways:
 - i) not require the construction of such walkways prior to the issuance of building permits for adjacent lots
 - ii) require the developer to clearly sign the location of all such walkways prior to the issuance of building permits within the concerned subdivision to the satisfaction of the Commissioner of Engineering and Works

August 10, 1983

Item 5 (Continued)

- iii) require a restriction be placed on the title of lots adjacent to such walkways which would prohibit the transference of said lots to private homeowners until the walkway has been constructed to the satisfaction of the Commissioner of Engineering and Works at which time the City Clerk is to provide a release on title to said restriction.
- b) That future Financial Agreements or Drainage and Occupancy Agreements for residential plans of subdivisions involving the construction of walkways, contain advisement to the owners and future owners of lots adjacent to walkways that they abut a walkway.

On July 6, 1983, the Public Works Committee deferred consideration of this report until this meeting.

A.00.02.01
RECOMMEND ADOPTION

- 6. Summary of Unfinished Business relating to the Public Works Committee as of August 10, 1983.

A.03.04.06
RECOMMEND RECEIPT



City of Mississauga

MEMORANDUM

To CHAIRMAN AND MEMBERS OF

From L. W. STEWART, Q.C.

Dept. THE PUBLIC WORKS COMMITTEE

Dept. CITY SOLICITOR

P. W. DATE AUG. 10. 1983

July 13th, 1983.

SUBJECT:

Lisgar District
Site Development Concept Plan
Six Lot Module

ORIGIN:

Recommendation 25-83
Public Works Committee
July 6th, 1983

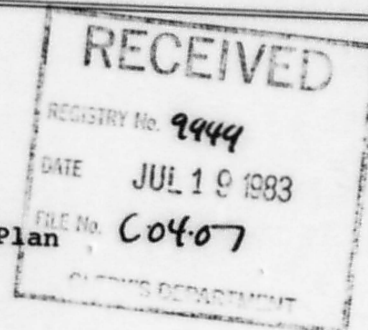
COMMENTS:

By clause b) (ii) of Recommendation 25-83, the Public Works Committee requested a report from the City Solicitor on the legal aspects of mutual ownership and the responsibilities involved with the private roadways within each module. This report will attempt to address that issue based upon the presentation made before the Committee on July 6th, 1983 by the developer and its various consultants.

The module proposal as currently framed presents some problems and weaknesses for which no adequate solution was suggested at the presentation. These matters will be canvassed under separate subject heads below.

LEGAL FRAILTIES

The module scheme as presented is designed to divide the module into six (6) distance, angled lots, each of which lots would have a stem or tail running in tandem with the stems from the other five (5) lots to terminate at the public highway which abuts the flat end of the pentagonal module. Collectively, the six stems make up the private road. When title is taken, each owner would acquire some form of right-of-way over the other five stems and his stem would be subject to right-of-way in favour of the other five lot owners.



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The developer has suggested that when the lots are conveyed, the purchasers would take them subject to a whole set of restrictions and covenants primarily respecting use and maintenance of the private road but also respecting development and use of the lots themselves. It appears that, essentially, a community image building restriction scheme would be imposed together with the innovation of a mandatory financial contribution component based upon a majority rule voting system among the six lot owners. This latter innovation is highly susceptible of challenge at law.

Without engaging in an elaborate discussion of the law on building schemes and their enforceability, suffice it to say that the transmission of the restriction from owner to subsequent owners depends upon the covenant being restrictive or negative in nature. It is well settled law in this jurisdiction that a positive covenant cannot be enforced against a subsequent owner by another owner in the building scheme. The consequence of this proposition is that once the first lot owners have sold their lots, enforcement of the maintenance and repair contribution scheme will depend almost entirely on goodwill. In deference to the statement made by the developer's solicitor, the goodwill need not be absolute as the common law has recognized a benefit-burden analysis in easement situations and the courts have arbitrated such disputes and apportioned liability in specific instances. Needless to say, this invariably involves protracted litigation with its own associated expense and it is not at all clear that this scheme will withstand that analysis or be found equitable given the range of quarrels which could arise.

A suggestion was made by the developer's solicitor, in a subsequent discussion, that the municipality might employ its authority under the Planning Act to enter into agreement with the developer, by way of a Ministerial condition imposed on draft approval of the plan, for the purpose of casting the road maintenance and repair obligations into an agreement for registration to the intent that it bind each successive lot owner. The terms of this agreement would, of course, incorporate all of the positive form of covenants which might otherwise fail to be sustained through transfers of ownership without

the benefit of the Planning Act authority.

Although this suggestion holds the promise of overcoming the common law problem, it casts the municipality in the role of the enforcer of these obligations as the agreement must necessarily be between the developer and the municipality. Any breach of the obligations imposed by the agreement would likely require direct intervention by the City into matters which are principally private in nature. The City could become a bill collector for five homeowners.

A further area of legal concern centres on liability for injury sustained in the private road. Fortune will dictate which owner is sued in the event of, for example, a guest or other party slipping on the roadway in winter. As liability will follow ownership, the exact location of the fall or injury will be critical. It is assumed that insurance cover can be arranged for risks in the roadway. The strip ownership will undoubtedly lead to suits being commenced by an injured party against all six owners due to the uncertainty of which owner or owners are the proper defendants. This might affect the level of insurance premium payable for liability protection but we, as yet, have no information on this point. Another interesting possibility arises where the owners determine that they will undertake snow clearance and road maintenance themselves. Where one of the owners carries out this task negligently or in a careless fashion and another owner or his or her invitee suffers an injury to person or property as a result, the prospect of neighbour suing neighbour becomes a reality.

CONDOMINIUM STATUS

All of the elements are present in this development proposal to indicate that the appropriate property regime for this proposal is condominium. The Condominium Act provides a mechanism for the holding of common property, the levying and collection of sums for common expenses, the enactment of by-laws to regulate conduct and use of the property as well as clear provisions regarding liability, insurance and other matters related to the holding of common property. The character of the condominium

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- 4 -

corporation can be set by the number of modules included and the extent of common property. The limits of the units can be drawn to include all of the yards, leaving the road as the only common element, or the yards can be designated as exclusive use common elements.

There is no comparison between two semi-detached homeowners sharing a mutual driveway and six lot owners sharing a six metre road which accommodates owner, guest and service traffic. There was no adequate explanation as to why the condominium regime was rejected.

HOMEOWNER PERCEPTION

As the module concept is a significant departure from standard municipal development it is necessary to consider the impact of this proposal on the future homeowner given the expectations of the contemporary Canadian homeowner.

The project will be set in the new community section of Mississauga and, apart from some rotation in orientation to the public highway, the dwelling units themselves will undoubtedly be similar in style and massing to the traditional form of housing in this section of the City. The private road will be six metres (20 feet) in width and will clearly function as a roadway and not simply as a "driveway". The private road will be paved and, although of lesser width, will appear to function as a municipal minor road. Despite this appearance and the level of expectation created from it, these lot owners will not obtain the usual municipal level of servicing associated with frontage on a public highway. In particular, snow clearance and road surface repair will not be available. Garbage collection will occur some distance from the far lots. Boulevard tree planting and streetlighting, including maintenance, with respect to the private road will become matters of homeowner expense.

By comparison with their traditional street-fronting neighbours, these lot owners do not receive a range of services that most Canadian homeowners have come to expect and demand. This differentiation is likely to be heightened due to the similarity in appearance of these development forms. If this were not a mass housing development or if the setting were physically radically different from the neighbouring development

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it may have been possible to suggest that such comparative perceptions would not arise. As this suggestion cannot be accepted, one must acknowledge the very distinct possibility of future homeowner demand for City assumption of these private roads. This would undoubtedly entail substantial expense in the acquisition of snow clearing equipment suitable for these roads and in repair of roadways not built to a municipal standard.

During the course of the presentation statements were made which tended to dismiss or undermine the role of the public highway in the habitability and vitality of the homeowner's place of residence. It was implied that the sense of privacy and security supposedly inherent in the private road module would likely make these lots more attractive than the reduced frontage lots which front directly on the public highway.

No evidence was presented that this assumption had in any way been analysed or tested. In fact, historically the public highway has served a critical function in community development and the habitability of residential areas. Virtually every settlement on this continent has relied upon residential development adjacent to public highways and not private roads. In accordance with the direction in the Planning Act, when considering a draft plan of subdivision, regard shall be had to the health, safety, convenience and welfare of the future inhabitants of the lands. There is an onus on the developer, in view of the novelty of this concept, to satisfy Council that removal of these residents from the traditional alignment to the public highway is in the best interests of those residents and the municipality at large. At present, without such justification, the proposal appears simply to be a means of providing private land at the expense of public land.

BUILDING RESTRICTIONS

Reference was made, during the presentation, to a set of building restrictions which would be imposed as part of the conveyancing of these lots. The intent of the restrictions is apparently to maintain the architectural integrity of the design proposal and to reinforce an open space character within the module. To the latter end it was suggested that in most instances the lot owners would be restrained from erecting boundary fences.

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- 6 -

Although it is more properly in the domain of the Planning Department to offer comment on site design and site improvements and restrictions, the issue of fences is germane to this department. The provisions of the Line Fences Act clearly contemplate a basic right to erect a line fence marking the boundary of one owner's parcel of land from that of his neighbour. Any attempt to thwart this territorial demarcation impulse, which is endemic to North American society, is bound to create friction and conflict amongst neighbours and constitutes a risky interference with traditional property rights assumptions and patterns of behaviour. Neither child nor animal recognize notional barriers. To the extent that the triangular rear yards depend upon the absence of fences to render the space useable and comfortable, a substantial conflict may be created.

The foregoing is merely one issue which is raised for discussion in the context of the restrictions and site requirements necessary to make the proposal work.

RECOMMENDATION:

That the Site Development Concept Plan of a Six Lot Module with private road proposed for the Lisgar District, as currently conceived and framed by the developer, be considered premature and be refused.



L. W. STEWART, Q.C.
CITY SOLICITOR.

GSS/omc



City of Mississauga

16

MEMORANDUM

FILES: 11 211 00124
11 141 00039

RECEIVED

To	Chairman and Members of the	From	William P. Taylor, P.Eng.
Dept.	Public Works Committee	Dept.	Engineering and Works
DATE	AUG 5 1983	P. W. DATE	AUG 10, 1983
FILE No	C04-07		
CLERK'S DEPARTMENT August 4, 1983			

SUBJECT: Module Type Development Concept Plan.

ORIGIN: Public Works Committee Meeting of July 6, 1983-
REQUEST FOR REPORT NO. 134-83.

COMMENTS: At the Council Meeting of July 13, 1983, the following
recommendation of the Public Works Committee was
adopted:-

- "a) That the concept for the development of
up to 500 houses within Phase I of Lisgar
District, lands north of Britannia Road,
west of Tenth Line, as presented to the
Public Works Committee at its meeting
held on July 6, 1983, and described in
a report from the Commissioner of Engineering
and Works, dated May 16, 1983, be endorsed;
- b) That the Public Works Committee consider
reports at its next meeting:
 - i) from the Commissioner of Engineering
and Works on the length of time that
should be set aside to evaluate this
"module type" development before further
developments of this nature are considered,
and
 - ii) from the City Solicitor, after consultation
with Counsel for the Developer, on
the legal aspects of mutual ownership
and the responsibilities involved
with the private roadways within each
module."

Before commenting specifically on the foregoing
request we would suggest that Committee review
our previous report dated May 16, 1983, wherein
we attempted to look at this proposed module type
development objectively, and present to Committee
the advantages and disadvantages as we saw them
for discussion purposes with a view to obtaining
the Public Works Committee's reaction as to the

continued...

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Page 2

Chairman and Members of the
Public Works Committee - continued

COMMENTS:
(continued)

viability of further pursuing this concept. In addition, you will note that the final paragraph of our report suggested that if the Committee felt that this concept should be tried, that a trial section of approximately 120 lots (20 modules) only should be considered. Further, we suggested that no more development of this nature should be considered until the City and the Region have had at least two years in which to evaluate the module type development.

First of all, we would like to go on record at this time that we have no objections to the proposals as outlined in this module concept as all of the culs-de-sac are to be developed on private rights-of-way and, therefore, all of the normal City services (snow plowing, garbage collection, road maintenance, streetlighting, etc.) are to be maintained by the private home owner in perpetuity at his personal cost. The through roads will be public, constructed to City standards and maintained in our usual manner. If this proposal could be guaranteed from a legal standpoint that the City would never be required to take over these rights-of-way as City road allowances in the future, then our main concern would be eliminated. However, the attached report from Mr. Stewart seems to indicate that this cannot be guaranteed from a legal standpoint.

We also feel that we should address the Burnbrae Drive situation as it was brought up at the July 6 meeting. In this situation there are approximately six houses which are served by Burnbrae Drive, which is a public dedicated road allowance; however, it is used for municipal addresses only. The Burnbrae Private Drive is used to provide access to the six properties. This private drive appears to be working well, and based on the research which has been done by Mr. Salter of Team 3, this concept has posed very few problems to the owners of the property and would, therefore, be considered satisfactory; however, Committee should be aware that if the owners ever went to war with each other they still have frontage and access to a

continued.....

Chairman and Members of the
Public Works Committee - continued

COMMENTS:
(continued)

public road even though the gradients are less than ideal, although not unlike many other driveway accesses in other municipalities. We would, therefore, suggest that although the Burnbrae Drive situation appears to be quite adequate it is not a comparable situation to the six module concept on a purely private road.

With respect to the request that we report specifically on the length of time that should be set aside to evaluate this module type development before further developments of this nature are considered, we are of the opinion that a reasonable time should be in the order of two years after City Council has assumed the subdivision. This length of time should give staff and elected officials sufficient time to evaluate the following points:-

1. The residents reaction to the type of service provided for garbage collection, that is, bringing their garbage out to some common place at the intersection for pickup.
2. The success or failure of the residents looking after their snow plowing and maintenance of their street.
3. Parking availability.
4. Public reaction to the concept in general.
5. Drainage complaints as a result of lot grading. (It will not be just a simple matter of putting a catchbasin in and connecting it to the storm sewer because the only storm sewer available is on the public roads, and easements may be required to provide a storm sewer to remedy private problems from one or more sets of modules.
6. Number of manholes required on sanitary and F.D.C. sewers. (Should there be a manhole at each intersection on each sewer to accommodate maintenance by the residents?)

continued.....

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Page 4

Chairman and Members of the
Public Works Committee - continued

COMMENTS:
(continued)

7. Residents reaction to downspouts spilling onto the ground and to evaluate any illegal hookups which may have been made to the F.D.C. sewers. We understand that this has been a problem in another municipality where the 3 pipe system has been used.

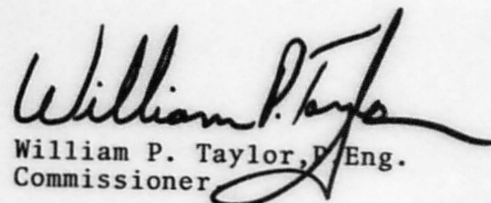
As far as the amount of land that should be permitted on a trial basis is concerned, our original recommendation of 120 lots (20 modules) was based on the assumption that 20 private streets was a reasonable trial. We are still of the opinion that this is a fair and reasonable number for a concept of this nature which is requiring middle price home owners to live with private roads and services in perpetuity without condominium legislation.

We have also reviewed the City Solicitor's report on the module type development concept plan wherein he is of the opinion that the private road concept as currently conceived should not be considered and, therefore, we would be very reluctant to recommend any development contrary to this opinion.

RECOMMENDATION:

That the private road module concept not be approved as presently proposed as it cannot be supported from a legal standpoint. However, if Council wishes to test a private road system on a trial basis in a new development that the area be limited to 120 lots (20 private streets), and that no further private road development be permitted in the City of Mississauga until such time as the City has had two years in which to evaluate the concept after assumption of the development by City Council.

WPT.mh
att.
c.c. E.M. Halliday


William P. Taylor, P. Eng.
Commissioner



City of Mississauga

15

MEMORANDUM

FILES: 11 141 00039
11 211 00124

RECEIVED

To: Chairman and Members of The Public Works Committee
From: William P. Taylor, P.Eng.
Dept. Engineering and Works
REGISTRY No. 5482
MAY 17 1983
FILE NO. C-04-07

P. W. DATE May 19, 1983
CITY'S DEPARTMENT

May 16, 1983
P. W. DATE Aug 10, 1983

P. W. DATE July 6, 1983

SUBJECT: Lisgar District - Site Development Concept Plan.

ORIGIN: Engineering and Works Department.

COMMENTS: The Consulting Engineer on behalf of the Developer for the Lisgar District has presented to us a proposed servicing concept for our comments. This concept is entirely different to our normal engineering standards and therefore we felt it should be presented to the Public Works Committee at this time for discussion purposes and attempt to evaluate the pros and cons from a City standpoint with a view to obtaining direction from the Committee as to whether or not we should pursue this proposal further.

Attached is Sketch 'A' showing the proposed layout and the Consulting Engineer has indicated that the first phase will be as shown on Sketch 'A'. The modules vary in size from 140 ft. to 160 ft. by 210 ft. to 240 ft. and each module contains six houses. The servicing for these six dwellings is by means of a private road (dished pavement and no curbs) as shown on Sketch 'B'.

The road is a 20 ft. private lane with two 8 ft. easements on either side which will be on the front lawns of the lots and is for the purposes of shallow utilities such as Gas, Bell, Hydro, Cable T.V., etc. The lots drain overland onto the dished roadway and subsequently out to a catchbasin which is located at the intersection of the public road. There is no storm sewer on the private road and the weeping tile is picked up by a 6" foundation drain collector sewer. This servicing concept is shown on Sketch 'C'.

We would now like to discuss the pros and cons of this concept and pose questions which we feel must be answered from a practical point of view prior to formally submitting our comments to the developer.

.... continued

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May 16, 1983

To: Chairman and Members of
The Public Works Committee

COMMENTS (Cont'd): It should be pointed out that the following questions and comments are purely for discussion purposes in order to get the Public Works Committee's reaction as to the viability of further pursuing this concept.

Advantages:

1. The servicing costs, we would presume, will be less from the Developer's standpoint, and therefore, should be reflected in the prices of the lots.

(We are also realistic and know that the law of supply and demand governs, and lot prices will sell for whatever the market will bear.)

2. Less roads for the City to maintain including associated facilities such as storm sewers, storm drains, streetlighting, snow plowing, etc. as maintenance of these facilities will be the responsibility of the homeowners themselves. (This can be negative from a political standpoint.)
3. Increased exposure of the unit to sunlight.
4. Proposed public road system is a grid pattern which is energy efficient and better from a Transit standpoint.

DISADVANTAGES

1. Garbage Collection - The residents will have to take their garbage and place same at the intersection of the public street for pick-up.
2. Snow Removal - The residents would have to get together and collectively arrange for snow removal on their private street. This can present problems from a logistic and financial standpoint. Also there will be complaints about the windrow left by the City's snow plow at the intersection of the private street after the public street has been plowed.

.... continued

...3...

May 16, 1983

12

To: Chairman and Members of
The Public Works Committee

- COMMENTS (Cont'd):
3. Problems with the blockage of the sanitary sewer which affects some people and not others - this however, is a Regional problem and the Region should comment on the sanitary and water services to be undertaken.
 4. As this proposal would not be under condominium legislation and the maintenance of the roads, etc. would probably have to be covered by some agreement which is registered on title, the Legal Department should be asked to comment on this proposal as well.
 5. Possible social problems where disputes arise over cost sharing of the maintenance.
 6. Parking. It seems to us that parking on the private roads is not feasible due to the width and therefore, overflow parking will occur on City roads. If this is to happen, roads such as Tenth Line, Aquitaine Avenue and Battleford Road will have to be wider.
 7. Utility easements - the front 8 ft. of each lawn is proposed to be for utility easements. Additional costs may be encountered by the developer as a result of this, however, comments from the P.U.C.C. will be submitted within 2/3 weeks.
 8. Can the politician live with a proposal such as this where people in other areas who own freehold properties receive full municipal services whereas these people will not. Will there be complaints when staff say that the problem is purely on private property, whether it be road repair, snow plowing, or storm sewer blockage. Will the people want reduced taxes as a result of them maintaining the private street and services.
 9. Eliminating the storm sewer system on the private road predicates that the lots and the private road must be artificially tilted by the placement of fill to ensure that all drainage within a module is directed to the single catchbasin located at the intersection of the private road with the public road.

...continued...

...4...

May 16, 1983

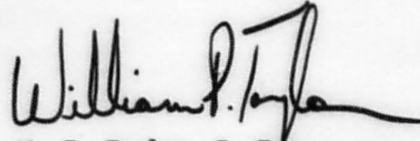
To: Chairman and Members of
The Public Works Committee

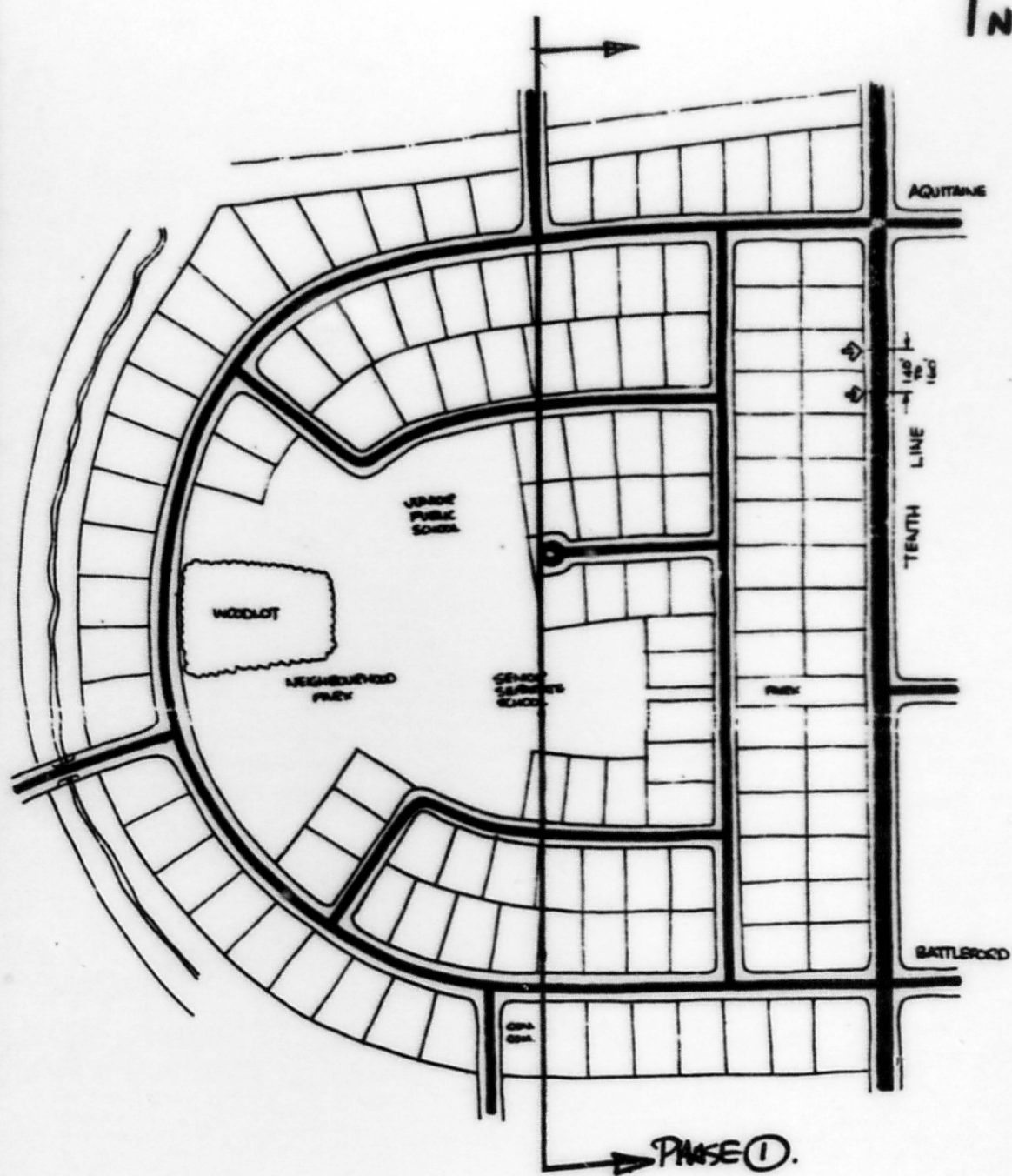
COMMENTS (cont'd): The Committee can see that what is being proposed is a radical change in single family residential developments and if it is approved for Lisgar, it will likely be requested in other new areas of the City.

Based on the foregoing, we suggest that if Committee feels that this concept should be tried, they should not permit all of Phase I to be developed as proposed, but should only allow a trial section of approximately 25% which should be about 120 lots (20 modules) to be developed as proposed. Further, we would recommend that further development of this nature not be considered until the City and the Region had at least two years to evaluate the module type development.

RECOMMENDATION: That the Public Works Committee's comments on this concept be reflected into the Engineering Department's comments to the Developer with respect to the Lisgar Site Development Concept Plan.

cc : E. Halliday
AEM:sa
58E/7E


W. P. Taylor, P. Eng.,
Commissioner,
Engineering & Works Dept.

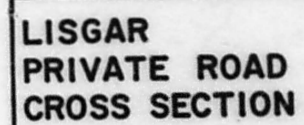


NOTE:
DIMENSIONS SPACING FOR
SINGLE FAMILY RESIDENTIAL BLOCKS
140' TO 160' & TO 2'

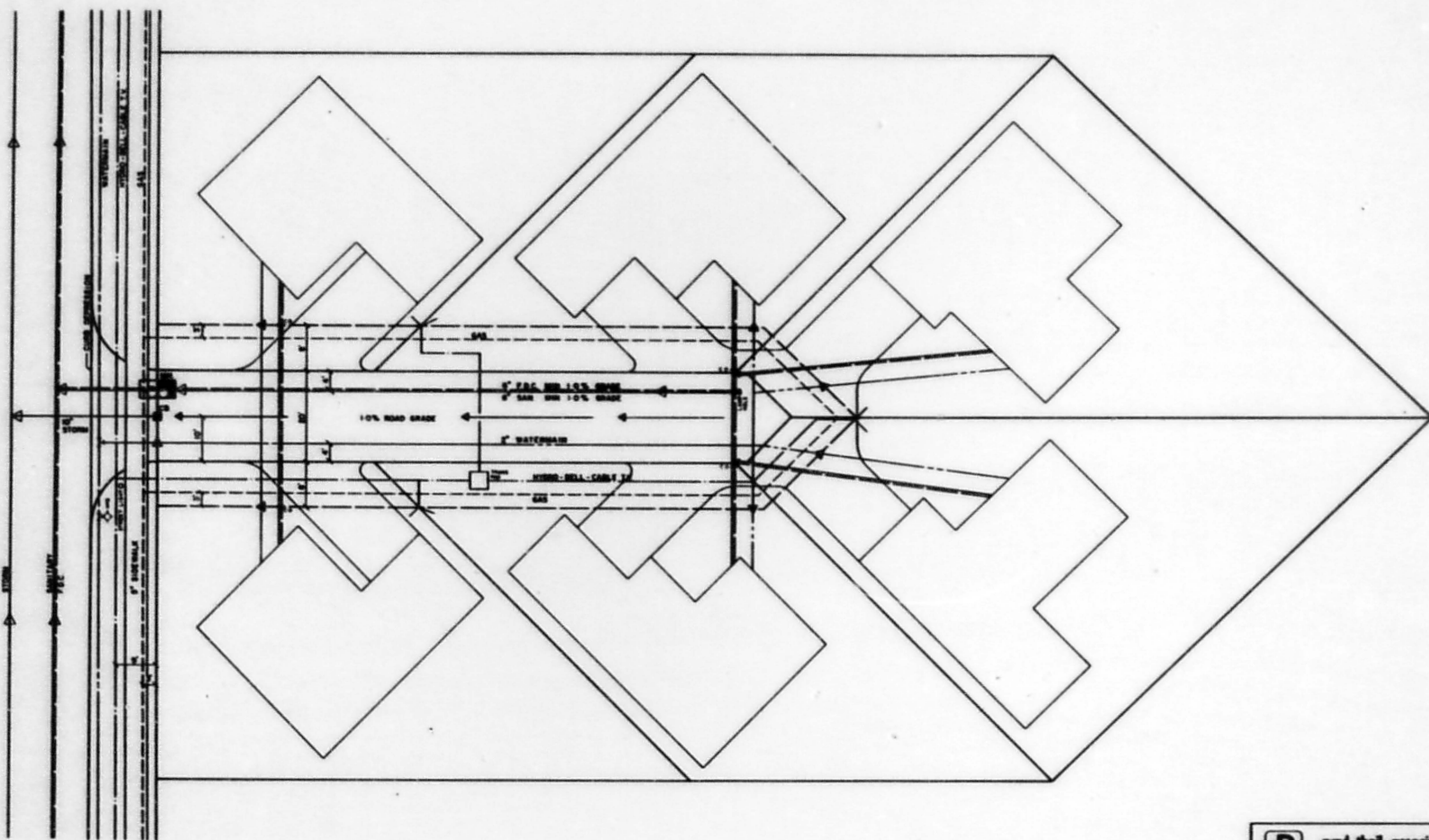
TEAM THREE

SCALE 1/8" = 100'
DATE APR. 25, 1985

SKETCH "A"



paul theil associates limited
consulting engineers
700 Balmoral Drive, Bramalea, Ontario.



SKETCH 'c'

	paul thell associates limited consulting engineers 700 Richmond Drive, Brampton, Ontario	
	LISGAR PRIVATE ROAD SYSTEM. ALTERNATIVE III	
DATE: APR 1983	DRAWN BY: JED	
SCALE: 1" = 40' 0"	PROJECT NO: 7000	

10

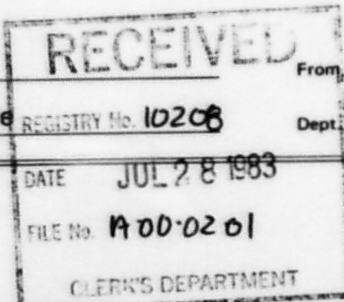


City of Mississauga

MEMORANDUM

FILES: 14 111 00001
11 141 00039

To: Chairman and Members
From: William P. Taylor, P.Eng.
Dept. Public Works Committee
Dept. Engineering and Works



P. W. DATE **AUG 10, 1983**

July 25, 1983

SUBJECT: Cash contribution requirement by the City for constructing sidewalks on major roads as a condition of rezoning and site plan approval.

ORIGIN: Engineering and Works Department.

COMMENTS: Resolution #32 adopted by Council at its meeting of January 25, 1982, states that all rezoning and site plan applications which have not been approved by Council as of January 25, 1982, be required to pay for the cost of constructing a sidewalk on a major road which is adjacent to the development where no sidewalk exists at the present time.

A number of rezoning applications which have properties abutting major roads have requested the Engineering Department to consider deferment of this requirement to the site plan approval stage.

This Department has reviewed this request and are of the opinion that if a sidewalk is not warranted on the major road abutting the rezoning application at the time the City's Engineering Department is processing the said application, it would be in order to defer the cash contribution to the site plan approval stage.

In order to advise subsequent purchasers of lands for which a rezoning application was processed, that the cash contribution for sidewalks has been deferred to site plan approval, we recommend that a clause worded to the satisfaction of our Legal Department be incorporated into the Financial Agreement noting this requirement from the site plan applicant.

RECOMMENDATIONS: 1. That payment for constructing a sidewalk on a major road abutting a rezoning application be deferred until site plan approval, in the event that the City's Engineering Department feels that the sidewalk is not warranted at the time of the passing of the rezoning by-law.

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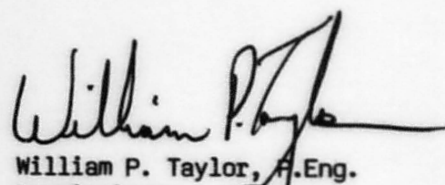
July 25, 1983

Chairman and Members
of Public Works Committee

RECOMMENDATIONS: (cont'd.)

2. That a clause worded to the satisfaction of the City's Legal Department be incorporated into the Financial Agreement for the lands being rezoned noting that the payment for constructing a sidewalk on the abutting major road be required as a condition of site plan approval.

/cc
235E/7E


William P. Taylor, P.Eng.
Commissioner
Engineering and Works

cc: E. M. Halliday

3



City of Mississauga

MEMORANDUM

FILE REF : 11 141 00039
13 211 00205

To: Chairman and Members of Public Works Committee
City of Mississauga
From: William P. Taylor, P.Eng., Commissioner
Engineering and Works
Dept. _____

RECEIVED

REGISTRY No. 6005

DATE JUN 1 1983

May 18, 1983

FILE No. F-060402

REQUEST NO. 54-83

CLERK'S FILE NO. F.06.04 02

P. W. DATE July 6, 1983

P. W. DATE AUG 10, 1983

LADIES & GENTLEMEN :

SUBJECT : Traffic Problems - School Zones.

SOURCE : General Committee Resolution 413-83.

COMMENTS : Council at its meeting of April 11, 1983, adopted the following resolution made by General Committee at its meeting of April 6, 1983 :

"413-83. That the Commissioner of Engineering and Works prepare a report for consideration by the Public Works Committee with respect to the implementation of a system whereby signs are erected and flashers activated advising the travelling public that the speed limit is reduced in an area which is a school crossing area, and/or that children are being picked up at that location, similar to systems which are in operation in various states in the U.S.A. and the feasibility of linking such signs with the computerized traffic system."

Under Section 109 (4) (a) and (b) of The Highway Traffic Act, changeable speed limit signs are permitted to reduce a speed limit to 40 km/h. The speed limit can be reduced only on sections of roadway immediately adjacent to a school and within 150 meters along the roadway in each direction beyond the limits of the land used for the purposes of the school. Therefore, speed limits cannot be lowered by means of changeable message signs in areas of school crossings or where children are picked up, unless these locations are adjacent to a school.

continued ...

2A

- 2 -

SUBJECT : Traffic Problems - School Zones.

COMMENTS :
continued ...

Under Section 109 (4) (b) the speed limit can be reduced to 40 km/h on days which school is regularly held, and between the hours of 8.00 am and 5.00 pm. The Act further requires that the speed zone signs must be signed by signs either :

1. Electrically illuminated from within the sign and legible to approaching drivers only when the sign is illuminated, or
2. Mechanically louvred type sign which displays the speed limit only during the period of operation.

The shape, size, colour etc. of the signs is also specified in the Act.

To the best of our knowledge three municipalities in Ontario (London, Burlington and Wasaga Beach) have used the special speed zone signing to reduce the speed limit on a roadway adjacent to a school. The Engineering Department contacted these municipalities and found the signs have been removed in both Burlington and London as it was determined that they were essentially ineffective and did not make any significant change to the traffic speeds in operation on streets where the signs were installed.

Both municipalities used the internally illuminated signs which showed the 40 km/h speed limit when activated. It was found that the message was not highly visible to the motorist and the City of Burlington added flashing amber lights in an effort to make the signs more visible. Enforcement problems were experienced by the Police in both municipalities and they both indicated that they had experienced maintenance problems with the installations.

It is under that both London and Burlington used these signs in school zones adjacent to major collector roadways. Burlington's installation was on New Street which is a four lane east-west major collector with a basic speed limit of 60 km/h.

continued ...

36

- 3 -

SUBJECT :

Traffic Problems - School Zones.

COMMENTS :
continued ...

Wasaga Beach has had their signs installed in two areas adjacent to schools for the past six or seven years. The signs are installed on a two lane roadway as opposed to the more major roads in the other two cities.

In discussions with a representative of Wasaga Beach it was indicated that no studies had been conducted to quantify the signs effectiveness, however it was felt that the signs were effective. This was contributed to the fact that Wasaga Beach is a small town and during the majority of the time schools are in, the traffic is made up of only the local people.

It is felt that the experience of Burlington and London would more closely indicate the experience that Mississauga could expect.

A louvred type sign which is also permitted under the Highway Traffic Act would be more visible than the internally illuminated signs used by London and Burlington, however they would be subject to more maintenance and possible jamming during winter months.

With regard to the application of reduced speed zones in Mississauga, as indicated above reduced speed zones cannot be implemented at school crossings or school bus loading areas unless they are located adjacent to a school. The City's current practice is to erect the standard blue and white school crossing signs and to paint a yellow crosswalk on the roadway. These signs and pavement markings are installed where children regularly cross a roadway on the way to school. On busier roadways, adult school Crossing Guards are placed to assist the children. Also, at selected locations additional signing and flashing amber lights operated by the Crossing Guard have been installed to alert motorists to the presence of the school crossing.

While it is feasible to connect the above noted flashing lights to the computerized traffic control system, it is not recommended since it is the experience of the Engineering Department that the current system of having the adult Crossing Guard activate the lights has been effective and if the warrant for the Guard is not there, it is unlikely that the flashing lights would be required.

continued ...

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- 4 -

SUBJECT : Traffic Problems - School Zones.

COMMENTS :
continued ...

Also the site would require the installation of a Communications Unit and Bell Canada lines as well as assignment of an intersection location, thereby reducing the ultimate capacity of the computer system with respect to traffic control signals.

The flashing lights could possibly be operated from an adjacent traffic control signal, however it is not recommended that flashing lights be too close to a traffic signalized location and therefore it may not be technically feasible due to line losses, difficulty in running the lines to the crossing location, etc.

Where children are being picked up, the most effective means of controlling traffic is the flashing red lights on the school bus where under the Highway Traffic Act motorists are required to stop in both directions on an undivided highway. It is our opinion that the installation of flashing lights at this intersection would be inappropriate and could cause driver confusion. Also, the bus pick up points are somewhat flexible and are determined by the School Board and are based on where the students are living.

With regard to lower speed limits (i.e. 40 km/h), it has been the City's practice to maintain the use of 40 km/h speed zones for roadways immediately adjacent to schools, but which are not arterial roads or major collector roads.

Tomken Road which is designated as a major collector, has an existing lengthy reduced 40 km/h speed limit, which was installed many years ago. We would note that our experience has shown that unless there is strict enforcement by the Police, this speed zone is not obeyed even during the times children are going to school.

Since most of the schools are used as playgrounds after school hours and on weekends, it would be reasonable to maintain the 40 km/h speed zone on roadways adjacent to the schools, where the schools are located on roads which are not on arterials or major collectors.

In the case of Tomken Road, the changeable signs permitted under the Highway Traffic Act could be used to increase the speed limit to the statutory 50 km/h after school hours. It is estimated that the cost to install a system of changeable speed signs for the entire existing 40 km/h section of Tomken Road, would be \$55,000.00.

continued ...

35

- 5 -

SUBJECT : Traffic Problems - School Zones.

COMMENTS :
continued ...

Based on the experience of Burlington and London with these signs, as well as our experience with existing 40 km/h speed zones, it is recommended that the City of Mississauga not enter into this program in view of the costs and the lack of influence on driver behaviour in the larger urban area.

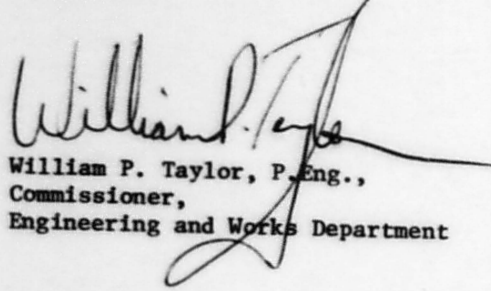
RECOMMENDATIONS :

1.

That a system of changeable speed signs on roadways adjacent to schools within the City of Mississauga not be implemented.

2.

That a system whereby signs are erected and flashers activated for school children at a school crossing or pick up area, not be implemented as it is not permitted under the Highway Traffic Act.


William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works Department

cc : E.M. Halliday

 :jb



City of Mississauga

MEMORANDUM

FILE: 11 141 00039
13 111 00003

4

To: Chairman and Members
of Public Works
Dept.

RECEIVED

REGISTRY No. 5737

DATE MAY 25 1983

FILE No. C.03.03

F.06.04.02

CLERK'S DEPARTMENT

William P. Taylor-Engineering
A. Franks - Building

P.W. DATE JULY 6, 1983

May 18, 1983
P.W. DATE AUG 10 1983

SUBJECT:

On-Street Parking in Residential Areas

ORIGIN:

Public Works Committee
Report Request No. 71-82

COMMENTS:

In order to review areas where on-street parking problems are being experienced a staff committee was formed with representatives from the Engineering Department, Building Department and Planning Department.

The Building Department identified some 50 locations on 19 streets where on-street parking is occurring adjacent to multi family residential areas. These areas included apartment, and townhouse developments.

By-Law Committee at its meeting of May 12, 1983, requested that the issue of on-street parking in single family residential areas also be addressed.

The problem associated with the control of on-street parking on roads adjacent to multi family residential areas has been reviewed a number of times in the past. In 1979, a schedule was included in the Traffic By-Law to permit parking in excess of the three hour maximum time period. The Condominium Corporation situated at the northwest corner of Glen Erin Drive and Gananoque Drive had requested permission to park on the street to relieve an on-site parking deficiency. Since that time similar requests have been received throughout the City and other streets have been exempted from the City wide three hour maximum parking limit. At this time the areas exempt from the three hour limit are not signed as it was felt when this system was set up that signing would encourage others to park in the area thereby taking away space which was made available to meet a particular need for a specific development.

As indicated above some 50 locations were identified by the Building Department. The Engineering Department conducted a comprehensive review of the 50 locations which

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Chairman and Members of
Public Works

COMMENTS: (Continued)

were identified as problem areas with respect to insufficient on-site parking facilities. On-site inspections were made, site plans where available were obtained and reviewed. Also, where possible the superintendents and property managers were contacted for their comments.

In paraphrase, the following are examples of comments received during our review:

- some superintendents said "they were not aware of a shortage of parking, they had received no complaints from tenants and they even had a few vacant spaces". this comment, while deemed accurate, only occurred in a very low percentage of the sites visited.

Other comments which were received which point to the reasons for the parking problems were:

- "there is insufficient on-site parking 125% or 150%"
- "many families had 2 or more cars"
- "garages were used in many cases for storage or for purposes other than vehicle parking"
- "some people leave cars on the road because it was closer to their apartment and they could keep an eye on it". In relation to this comment there was one specific case where a tenant experienced malicious damage to his vehicle while parked in the parking lot; he now parks it on-street where he can see it from his apartment
- "some tenants park their vehicles on-street to avoid paying the monthly parking fee". Some superintendents commented that these people feel that paying for 1 or 2 parking tickets per month is still cheaper than paying for a parking space. Generally, the three hour parking limit is enforced only upon receipt of a complaint.
- "women were afraid to use underground parking garages"

.../...

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Chairman and Members of
Public Works

COMMENTS: (Continued)

- "there appeared to be a general lack of visitor parking in most of the areas visited"
- "parking on the street is more convenient"

The above comments represent what we have found to be a good representation as to the reasons for the current problem on a City wide basis.

We have found during this period of review that developments fairly recently approved are also experiencing some parking problems. These problems are developing for basically the same reasons as previously mentioned, i.e. two to three vehicles per family, garages not being used for parking purposes, insufficient on-site parking for senior citizen buildings, etc.

There are a number of options available to address the long term parking of vehicles on roadways. These options are as follows:

Option 1

Keep the existing system of removing the three-hour maximum parking limit on a selected basis with no signing

Option 2

Exempt certain areas of roadways from the three-hour maximum parking limit and sign the exempted areas.

Option 3

Eliminate the three-hour maximum limit on a City wide basis and permit long term parking on roadways except where a prohibition of parking is recommended for traffic flow or other reasons.

Option 4

Institute Permit Parking on a selected basis.

Permit parking was addressed in a report to Public Works dated May 11, 1979. This report recommended against permit parking and suggested the current system of specific exemptions from the three-hour maximum parking limit. It

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Chairman and Members of
Public Works

COMMENTS: (Continued)

is felt that the City should not institute a system of permit parking. In general, residential developments have reasonable off-street parking facilities and where there are problems, it is felt that satisfactory arrangements can be made for the provision of additional on-site parking or by the provision of an exemption from the three-hour maximum parking limit. The areas which are experiencing the on-street parking problems are not as intensive as the problems which are being experienced in the City of Toronto which has the permit system. The administration and enforcement of a permit system is complex and if a system of permit parking is instituted very strict criteria would have to be established. Additional staff would be required for both the administration and the enforcement of such a system.

Option 5

Install On-Street Metered Parking

This would involve the placing of on-street parking meters in areas where long term overnight parking is required. This would be suitable in areas adjacent to higher density residential areas where there would be enough demand. This option would require considerable capital investment, however, the anticipated revenues would result in a payback in approximately two years. This system would require substantial enforcement in order to ensure that there would be no freeloading. Increased parking enforcement officers would be required.

From our review it is evident that a system to permit long term on-street parking should be instituted in a limited site specific manner. Also, it is evident that additional By-Law enforcement staff would be required to make any system function satisfactorily.

Any system that is implemented should be evaluated by the City based on actual need. If additional on-site parking can be provided, for example, by reducing open space (not below a reasonable level), or by re-marking an existing parking area to reflect the new parking space dimensions, this should be done before any consideration is given to exempting a roadway from the three hour limit.

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Chairman and Members of
Public Works

COMMENTS: (Continued)

It is suggested that the City institute a selective system of eliminating the three-hour limit on certain roadways and that alternate side parking be provided where possible and that the appropriate signing be installed. This alternate side parking would be permitted on one-side of the roadway between 7pm and 7am and then on the other side of the roadway between 7am and 7pm. There are areas where it may not be feasible to institute an alternate side parking system for example, where there is a multi family residential development across from single family residential development. In this case it is felt that it is more appropriate to have the on-street parking limited to the side of the road adjacent to the multiple family development and to prohibit the parking on the side of the single family development.

With this system staff will have to evaluate each request with respect to the following criteria:

- the need for the on-street parking
- the possibility and feasibility of providing additional on-site parking
- suitability of adjacent roadway to accommodate on-street parking.

If the above criteria are satisfied then staff would prepare a report recommending an exemption from the three-hour limit with the appropriate alternate side parking being provided.

This system would be appropriate for use in both multi family and single family residential areas.

It has also come apparent that the current parking requirements should be reviewed with respect to their adequacy particularly as they relate to senior citizen apartments.

RECOMMENDATIONS:

1. That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified.

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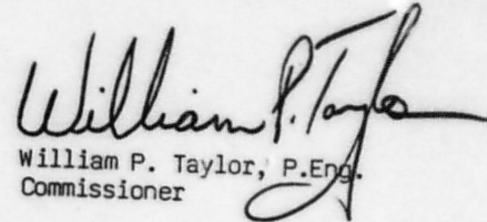
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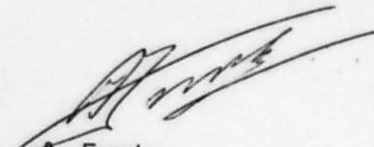
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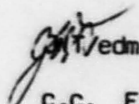
Chairman and Members of
Public Works

RECOMMENDATIONS: (Continued)

2. Additional parking control staff be provided for enforcement of Recommendation #1.
3. The Planning Department review current parking requirement standards.


William P. Taylor, P.Eng.
Commissioner


A. Franks
Building Department


c.c. E. M. Halliday
0058E/7E

46
1480 Robillard Road
Mississauga, Ontario
L5J 3K4

City of Mississauga
Attention: Councillor Marland
1 City Centre Drive
Mississauga, Ontario

P. W. DATE JULY 6. 1983

Gentlemen:

P. W. DATE AUG 10. 1983

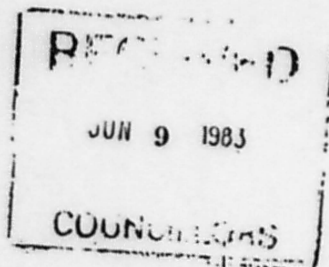
By-Law 444-79

I have been advised that Section 8-(J) of the above city by-law prohibits parking on city streets for periods of three consecutive hours. While this may be a necessity during ^{certain} times of the year and/or because of maintenance activity or traffic patterns, overzealous enforcement during the spring, summer, and fall in residential areas such as the one in which I live can cause problems. This is compounded by the city's policy of not releasing the names of persons who complain and force the parking enforcement crews to respond. Your office has been made aware of an ugly situation which has developed on Robillard Road because of the wording of the by-law and the secrecy policy.

I appeal to you for help. The same situation probably exists in other parts of the city. To help resolve, or at least shrink the problem. I suggest that the by-law be amended to permit overnight parking during that time of the year when snow removal vehicles are not at work. Other municipalities have such regulations and they seem to work well.

A reply as to what action can be taken is requested.

RAM:1md



R.A. McPhail
R.A. McPhail

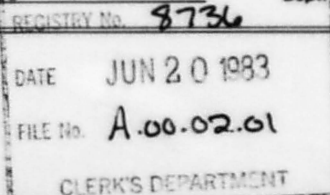


City of Mississauga

MEMORANDUM

FILES: 14 111 00001
11 141 00039

To Chairman and Members From William P. Taylor, P.Eng.
Dept. Public Works Committee Dept. Engineering and Works



P. W. DATE JULY 6. 1983

June 15, 1983
P. W. DATE AUG 10. 1983

SUBJECT: Deferring walkway construction within residential subdivisions until such time as the building works on adjacent lots are complete.

ORIGIN: A suggestion of the Urban Development Institute.

COMMENTS: Under the terms of the current Servicing Agreements for residential subdivisions involving walkways, a clause is included in Schedule 'C' which requires walkways to be constructed prior to the issuance of the building permits for abutting lots.

This procedure was implemented as a result of homeowners purchasing and/or occupying their lots and then finding a walkway being constructed beside them. It was also initiated at the time when lots adjacent to such walkways were larger and the side yard setbacks, at times, were large enough to permit the construction of the adjacent unit without considerable damage to either the walkway or the walkway fencing.

Recently, however, with the reducing of lot sizes, notwithstanding the 1.5 metre or five foot setback is required, the development industry has found that damages to newly constructed walkways are ever increasing.

Accordingly, the Urban Development Institute has suggested that walkway construction be deferred until prior to the occupancy of the units adjacent to such facilities.

While we are in general agreement with their concerns, we find that the prospective purchasers and occupants of such units should be protected as much as possible.

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...2...

June 15, 1983

Chairman and Members
of Public Works Committee

COMMENTS: (cont'd.)

Accordingly, we suggest that the location of future walkways within residential plans of subdivisions be signed to the satisfaction of the Commissioner of Engineering and Works prior to the issuance of building permits within the concerned subdivision, that advisement be included on the titles of the adjacent lots that they abut a walkway, and that the transference to the private homeowner be restricted on title until the walkway is actually constructed.

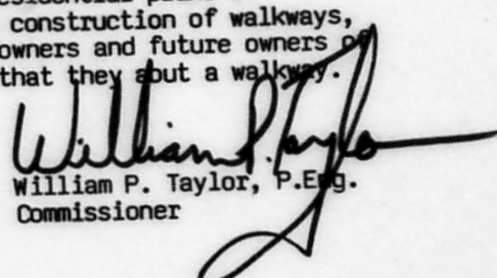
In this manner, we feel that the future owners will be reasonably advised and the concerns of the private development sector are best accommodated.

RECOMMENDATIONS:

1. That future Servicing Agreements for residential plans of subdivisions involving the construction of walkways:
 - a) not require the construction of such walkways prior to the issuance of building permits for adjacent lots
 - b) require the developer to clearly sign the location of all such walkways prior to the issuance of building permits within the concerned subdivision to the satisfaction of the Commissioner of Engineering and Works
 - c) require a restriction be placed on the title of lots adjacent to such walkways which would prohibit the transference of said lots to private homeowners until the walkway has been constructed to the satisfaction of the Commissioner of Engineering and Works at which time the City Clerk is to provide a release on title to said restriction.
2. That future Financial Agreements or Drainage and Occupancy Agreements for residential plans of subdivisions involving the construction of walkways, contain advisement to the owners and future owners of lots adjacent to walkways that they abut a walkway.

cc
235E/7E

cc: E. M. Halliday
R. G. Edmunds
A. Franks


William P. Taylor, P.Eng.
Commissioner

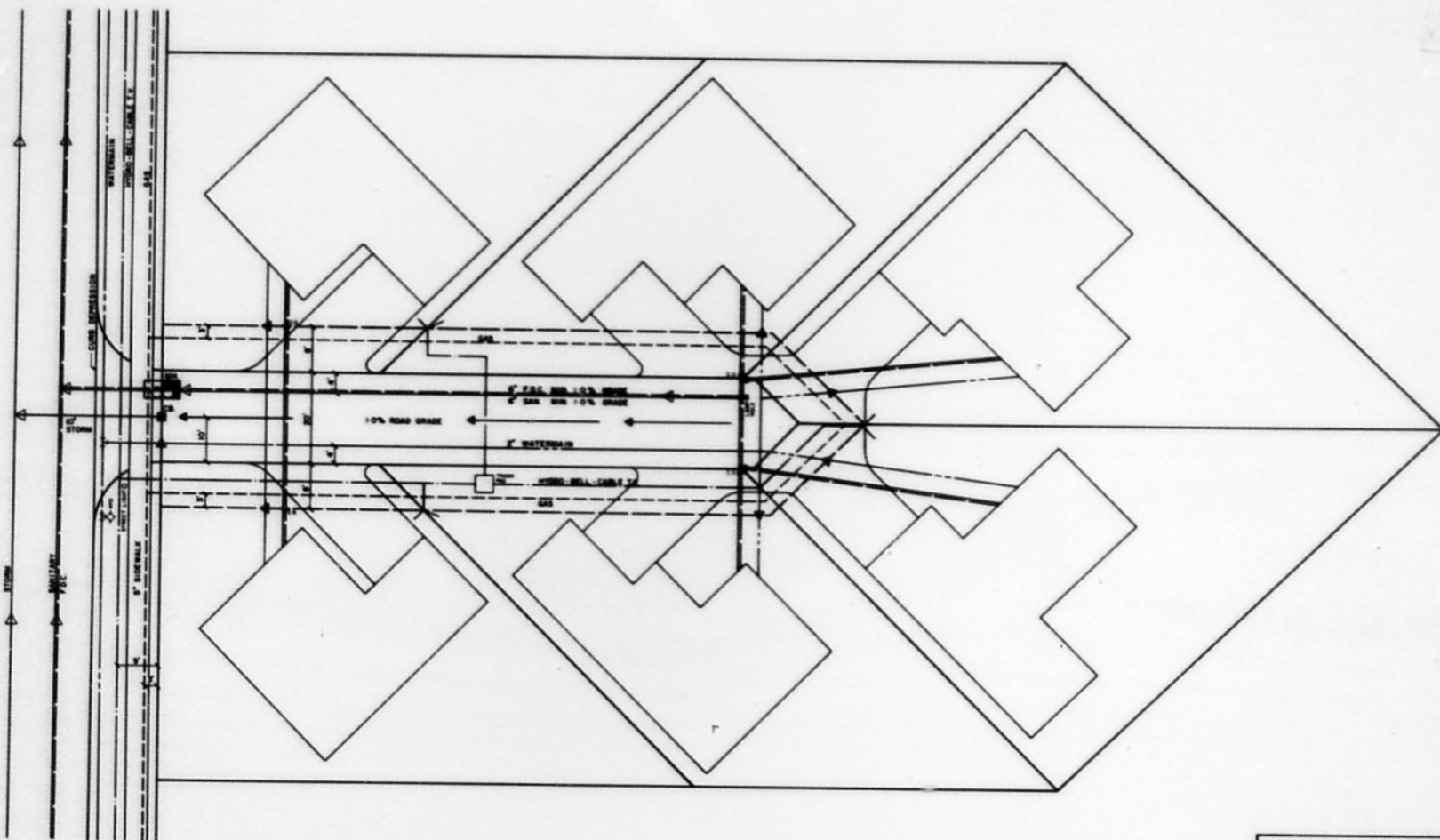
PUBLIC WORKS COMMITTEE
DATE: AUGUST 10, 1983

SUMMARY OF UNFINISHED BUSINESS

128C/17C

Page 1

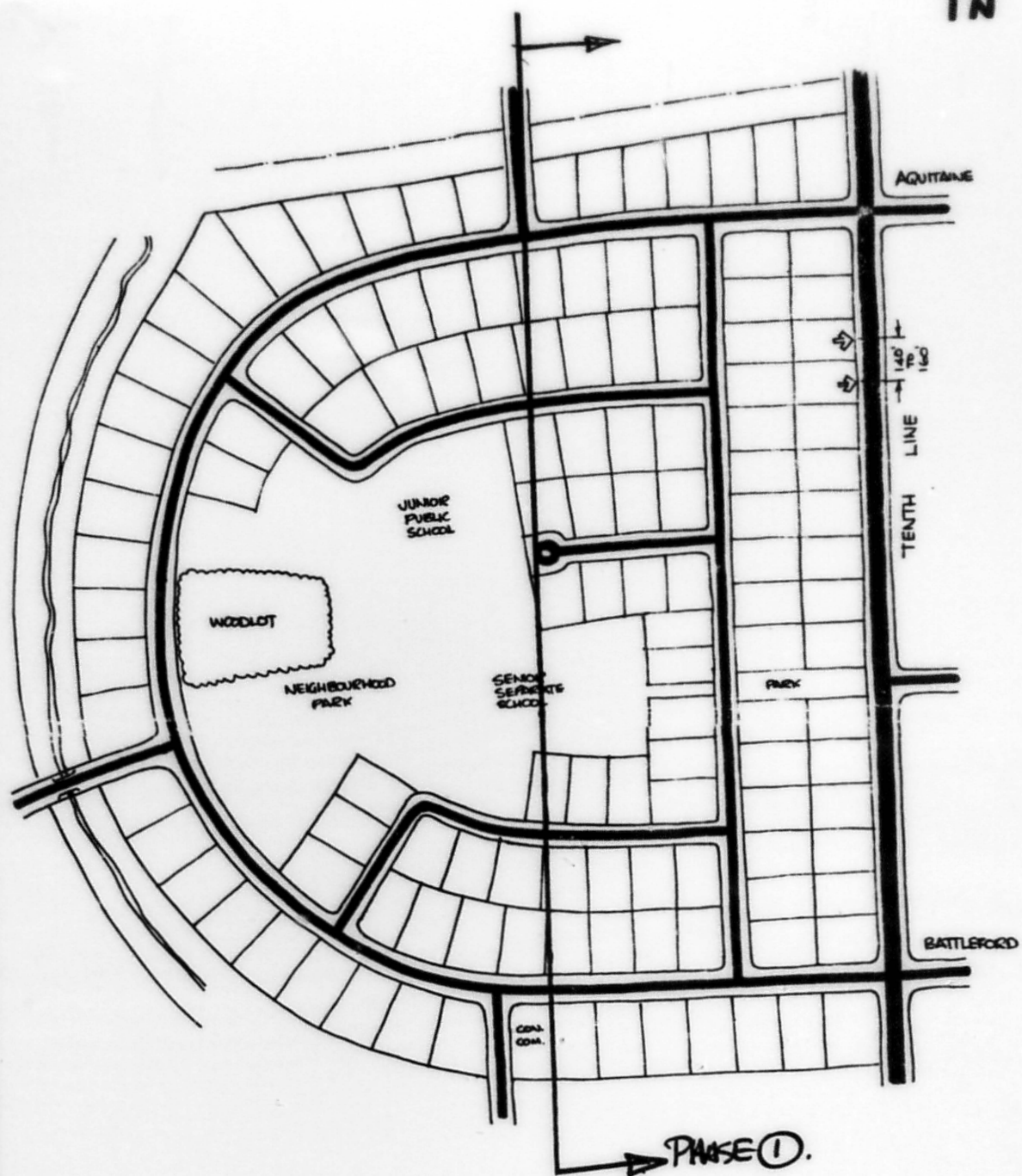
REQUEST NO.	REPORT REQUESTED FROM	SUBJECT	SOURCE	DUE DATE	NO. OF REVISIONS
163-82	Eng. & Works	Second Assessment of "rippled" pavement used as a speed deterrent on roadway at Mineola Rd. E. and Indian Road	Public Works - May 20/82 Public Works - July 6/83		
51-83	Eng. & Works	Report on outcome of staff meetings Torbram Road north grade separation	Public Works - Mar. 17/83 Report of W.P.T. -Mar.10/83	Sept.15/83	
133-83 <u>RECEIVED</u>	Legal Department	Legal Aspects of Ownerships proposed in Lisgar Development	Public Works - July 6/83		
134-83 <u>RECEIVED</u>	Eng. & Works	Evaluation period that should be established before further developments authorized	Public Works - July 6/83		
135-83	Eng. & Works	Feasibility of installing flashing amber lights at bus stops on North and South Service Roads	Transit Comm. - July 8/83		



SKETCH 'C'

	paul thel associates limited	
	consulting engineers	
	700 Balmoral Drive, Brampton, Ontario	
	LISGAR	
PRIVATE ROAD SYSTEM.		
ALTERNATIVE III		
DATE: APR 1983	DESIGN BY: JED	
SCALE: 1" = 10'-0"		
PROJECT NO: 7888		

19



NOTE:
 DRIVEWAY SPACING FOR
 SINGLE FAMILY RESIDENTIAL BLOCKS
 140' TO 160' & TO &

TEAM THREE

SCALE 1"=100'
 DATE APR. 28, 1983

SKETCH "A"

CITY OF MISSISSAUGA

MINUTES

MEETING #7

NAME OF COMMITTEE: PUBLIC WORKS

DATE OF MEETING: Wednesday, August 10, 1983

PLACE OF MEETING: Committee Room 'A' at 9:30 a.m.

MEMBERS PRESENT: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. D. A. Strutt
Mr. W. Schofield
Mayor H. McCallion

MEMBERS ABSENT: Mr. J. C. Saddington

OTHERS PRESENT: Councillor L. Taylor, left at 11:45 a.m.
Councillor T. Southorn, left at 11:45 a.m.
Councillor F. McKechnie, left at 9:45 a.m.

STAFF PRESENT: Mr. W. P. Taylor, Commissioner of Engineering and Works
Mr. A. McDonald, Director, Maintenance Engineering
Mr. B. Barker, Subdivision Control Engineer
Mr. L. W. Stewart, Q.C., Solicitor
Mrs. C. Dodds, Committee Co-ordinator

NOTE: Mayor H. McCallion declared a conflict of interest with respect to Item 1, due to the reference to the Lisgar District in the two staff reports. The Mayor's conflict of interest is by virtue of joint ownership with her husband of the property municipally known as 1560 Britannia Road West, which is their place of residence.

MATTERS CONSIDERED:

1. On July 6, 1983, Public Works Committee considered a report dated May 16, 1983, from the Commissioner of Engineering and Works, together with a presentation made by representatives of First City Development Corp. on the Site Development Concept Plan for Lisgar District; lands north of Britannia Road, west of Tenth Line.

At that time, the Public Works Committee's recommendation, which was adopted by Council on July 13, 1983, was as follows:

- A) That the concept for the development of up to 500 houses within Phase 1 of Lisgar District, lands north of Britannia Road, west of Tenth Line, as presented to the Public Works Committee at its meeting held on July 6, 1983, and described in a report from the Commissioner of Engineering and Works, dated May 16, 1983, be endorsed;

August 10, 1983

- B) That the Public Works Committee consider reports at its next meeting:
- (i) from the Commissioner of Engineering and Works on the length of time that should be set aside to evaluate this "module type" development before further developments of this nature are considered, and
 - (ii) from the City Solicitor, after consultation with Counsel for the Developer, on the legal aspects of mutual ownership and the responsibilities involved with the private roadways within each module.

In connection with this directive, the following reports were submitted to the Committee:

- (i) Report dated August 4, 1983, from the City Solicitor, on the legal aspects of mutual ownership and the responsibilities involved. This report replaced the earlier report dated July 13, 1983, from the City Solicitor, which was circulated with the agenda.

In his report, the City Solicitor warned of problems, from an enforcement and insurance liability point of view, that could result from the conveyance of lands subject to restrictions and covenants respecting the private roads. It was Mr. Stewart's opinion that condominium status would better protect the interests of the six individual owners within each module. Mr. Stewart further questioned the impact mutual ownership of an access road would have on future homeowners, given the expectations of the contemporary Canadian homeowner. Fencing and accepted standards of municipal services, such as snow plowing, curb garbage pick-up, etc. were of particular concern.

Mr. Stewart recommended: That the Site Development Concept Plan of a Six Lot Module with private road proposed for the Lisgar District, as currently conceived and framed by the developer, be considered premature and be refused; but that a small Experimental Six Lot Module development be permitted under the authority of the Condominium Act.

As clarification and since Mr. Stewart had not attended the Public Works Committee Meeting on July 6, 1983, it was pointed out that the developer had already addressed the matter of fencing, not only by including lot and swimming pool fencing on the model shown to the Committee on July 6, 1983, but also during his presentation on that date. Photographs of fencing in a similar development in the United States had been shown to Committee Members following that meeting.

August 10, 1983

Item 1 (Continued)

- (ii) Report dated August 4, 1983, from the Commissioner of Engineering and Works, on the development proposal and specifically on the length of time that should be set aside to evaluate this type of project before further developments of this nature are considered. The previous report from the Commissioner, Engineering and Works, dated May 16, 1983, referred to in his report dated August 4, 1983, was also attached for the Committee's information.

With respect to the length of the evaluation time, Mr. Taylor recommended a two year period. He felt that this would give Council and staff sufficient time to evaluate such things as the residents reactions to the municipal services and their success in providing the difference between usual City services and their own level of expectations. This would also allow for the adequacy of parking, drainage and the public's reaction generally to the scheme to be evaluated.

Mr. Taylor recommended: That the private road module concept not be approved as presently proposed as it could not be supported from a legal standpoint. However, if Council wished to test a private road system on a trial basis in a new development, that the area be limited to 120 lots (20 private streets), and that no further private road development be permitted in the City of Mississauga until such time as the City has had two years in which to evaluate the concept after assumption of the development by City Council.

Attending the meeting of behalf of Lisgar were the following:

Mr. Somer Rumm, Mr. Harry Petschar, Mr. Bill Salter, and Mr. Morty Gross and Mr. Steve Iczkowitz, both of the law firm of Borden Elliot, and Mr. Doug. Leavens of Paul Theil & Associates, Consulting Engineers.

Mr. Stewart briefly reviewed his report and reiterated his concerns:

- (a) Mr. Stewart expressed concern that the development, as proposed, would not provide adequate protection from unco-operative neighbours not willing to meet their commitments. He recommended that the development proceed under The Condominium Act, which did provide a structure to govern each module.

August 10, 1983

With respect to the suggested similarity of the module development with Lorne Park Estates, Mr. Stewart pointed out that while this development worked well, it had to be recognized that the number of houses was far fewer than proposed in Lisgar; the development had its own Corporation which worked along the lines of a condominium or co-op, and the lots were very much larger. The City's Commissioner of Engineering and Works added that in addition to larger lots, the road allowances within Lorne Park Estates could accommodate City streets were it ever necessary for the City to assume servicing responsibilities. He also pointed out that the Burnbrae Drive development was not comparable to the module development as had been suggested, since in this situation all property owners could have access to the public road allowance if necessary.

With respect to the condominium concept, Mr. Rumm responded that his own investigations suggested that this was not the method best suited to this form of development. It had been tried in the first stage of a similar development in Chicago and abandoned in later phases. The first phase planned for Lisgar was for 500 units at the upper end of their price range.

Mr. Gross, Solicitor for Lisgar, commented that Condominium development was not the only solution. It did however create a marketing problem. Other solutions still had to be explored such as creating a Condominium Corporation to cover each private road and ensuring that each share in the Condominium Corporation was included in the sale of each freehold property. This he felt would prove to be too complicated, but he was sure that through meetings with the City's Legal Department solutions would be found.

- (b) With respect to including positive covenants in the deeds, Mr. Stewart did not feel that the Courts had dealt sufficiently with benefit/burden concepts of rights-of-way.

Mr. Gross pointed out that Courts would look to English common law which had dealt with this problem and in particular would look at *Tito v. Waddell*, 1977.

August 10, 1983

Item 1 (Continued)

- (c) Mr. Stewart was further concerned that subsequent owners in the development would ask the City to take over the private roads and assume normal City servicing to the lots. It was agreed that the reduced servicing planned for the development would be reflected in lower assessments and consequently lower taxes which might be considered a benefit by property owners.

With respect to the concern that the owners would ultimately expect the local municipality to take over services, Mr. Gross pointed out that this would be no different from owners buying a condominium. People knew when they purchased a condominium that they had to look after servicing themselves. He felt prospective owners of a residence in a module development would be even better informed of their obligations before they finally purchased property since the private laneway was an obvious feature of the development.

Some Committee Members expressed concern that they were not being furnished with information on other similar or near similar projects. Discussion took place on other developments that varied between freehold and condominium ownership such as (i) the project at the south-east corner of Montevideo and Battleford Roads which had been built as a condominium, and then sold as freehold with minimal sharing of expenses for snow removal and recreational facilities, (ii) the condominium development on Creditview Road which had the outward appearance of single family homes, and (iii) Lorne Park Estates.

- (d) It was agreed that the Public Works Committee would sponsor an inquiry and the developer was asked to research and investigate other projects throughout Canada and the United States to determine and compare the number of units and costs; ultimate cost of homes; length of time the developments had been in existence; problems encountered by the local and regional governments, and methods used to govern and enforce the servicing and maintenance of commonly held elements within the developments.
- (e) With respect to the City Solicitor's concerns about insurance coverage and liabilities attached to the commonly held private laneways, Mr. Rumm advised that this had already been discussed and posed no problems for Insurance Companies. He agreed to obtain the written comments of his own insurance company.

Councillor Taylor disagreed with the rejection of the Condominium Act as the appropriate method of ensuring co-operation within each module. He expressed his concerns as follows:

August 10, 1983

Item 1 (Continued)

- (f) Councillor Taylor felt strongly that adequate control had to be established to protect owners and impose a structure for governing each module. Councillor Taylor pointed out that the Condominium Act imposed such a structure which included lien priority ahead of the mortgagee for the collection of the financial obligations from unwilling co-owners, which he felt was most important. To proceed otherwise, offered no means of redress other than litigation which did not give lien priority.

In response, Mr. Gross pointed out that the procedure with or without a condominium structure would be the same. The only difference would be on the length of time it would take the other owners to collect the bad debt.

- (g) Councillor Taylor pointed out that the proposal involved co-operative living which was unsuitable for a large segment of the population

As rebuttal, Mr. Rumm advised that the development had evolved in response to people's desire for open space around their residences.

- (h) Councillor Taylor wanted to know how the Region and the City could replace and maintain services on private property, i.e. sewer and water.

- (i) Councillor Taylor was concerned that legal complications that developed with a large group of people involved, would be forced on local elected representatives and ultimately would fall to the local Council to arbitrate and solve, e.g. Condominium Corporations' appealing assessment and challenging local municipalities to assume responsibility for services.

When asked for his comments, the Commissioner of Engineering and Works reaffirmed his earlier recommendation that should Council allow the development of the Lisgar lands to proceed, 20 modules only should be permitted allowing 120 lots and also recommending an evaluation period of 2 years.

It was moved by Councillor Marland that the reports from the City Solicitor and the Commissioner of Engineering and Works, both dated August 4, 1983, be received and the concerns outlined therein and the suggestions and concerns expressed at the meeting be referred to the City Solicitor, the City Commissioner of Engineering and Works and to the developer of Lisgar and his representatives, for reports back to the Public Works Committee. This motion carried.

Mr. Rumm thanked the Committee, and City staff for their diligent efforts and co-operation which had already contributed to the solution of some technical problems. It was his company's intention to offer the best possible housing to the citizens of the City. Mr. Gross added his thanks to Mr. Stewart for the assistance he and Mr. Iczkowitz had been given and stated that they both looked forward to further meetings to resolve the legal problems and produce the documentations that would be acceptable to all parties concerned.

August 10, 1983

Item 1 (Continued)

Upon the disposition of this item on the agenda, Mayor McCallion expressed her disappointment that the module-type development before the Committee had not been considered as a development concept rather than as a submission by a specific developer. Years ago she had expressed her concerns when the condominium development concept had first been introduced. Mayor McCallion urged the Committee, when considering this new type of development, to involve representatives from as many outside agencies as necessary and in particular, the Ministry of Municipal Affairs and Housing since new legislation might well be necessary to control the type of project proposed.

File: C.04.07

See Recommendation #32 (Councillor M. Marland)

2. Report dated July 25, 1983, from the Commissioner, Engineering and Works, on the City's cash contribution requirement for constructing sidewalks on major roads as a condition of rezoning and site plan approval.

Resolution #32 adopted by Council at its meeting of January 25, 1982, states that all rezoning and site plan applications which have not been approved by Council as of January 25, 1982, be required to pay for the cost of constructing a sidewalk on a major road which is adjacent to the development where no sidewalk exists at the present time.

In his report dated July 25th, Mr. Taylor advised that his department had received requests for a deferment of this requirement where the sidewalk is not warranted on the major road at the time his department was processing the application and he felt that it would be in order in such cases to defer the cash contribution until the site plan approval stage. He therefore recommended:

1. That payment for constructing a sidewalk on a major road abutting a rezoning application be deferred until site plan approval, in the event that the City's Engineering Department feels that the sidewalk is not warranted at the time of the passing of the rezoning by-law.
2. That a clause worded to the satisfaction of the City's Legal Department be incorporated into the Financial Agreement for the lands being rezoned noting that the payment for constructing a sidewalk on the abutting major road be required as a condition of site plan approval.

A.00.02.01

See Recommendation #33 (Councillor R. Skjarum)

ADOPTED

August 10, 1983

3. Report dated May 18, 1983, from the Commissioner of Engineering and Works, on traffic problems in school zones. This report was before the Committee in response to Recommendation 413-83 of General Committee, which was adopted by Council on April 11, 1983, "That the Commissioner of Engineering and Works prepare a report for consideration by the Public Works Committee with respect to the implementation of a system whereby signs are erected and flashers activated advising the travelling public that the speed limit is reduced in an area which is a school crossing area, and/or that children are being picked up at that location, similar to systems which are in operation in various states in the U.S.A. and the feasibility of linking such signs with the computerized traffic system.

In his report, the Commissioner advised that under The Highway Traffic Act, speed limit signs could only be reduced to 40 km/h between 8:00 a.m. and 5:00 p.m. on days on which school is regularly held and then only on sections of roadway immediately adjacent to a school and within 150 meters along the roadway in each direction beyond the limits of the land used for the purposes of the school. The Act further stipulated the size and type of signs that could be used. Mr. Taylor reported that three municipalities in Ontario (London, Burlington and Wasaga Beach) had used the special speed zone signing to reduce speed limits on a roadway adjacent to a school and he described their experiences.

In conclusion, Mr. Taylor recommended:

- (a) That a system of changeable speed signs on roadways adjacent to schools within the City of Mississauga not be implemented.
- (b) That a system whereby signs are erected and flashers activated for school children at a school crossing or pick up area, not be implemented as it is not permitted under The Highway Traffic Act.

F.06.04.02

See Recommendation #34 (Councillor D. Cook)

ADOPTED

4. Joint report dated May 18, 1983, from the Commissioner of Engineering and Works and the Acting Commissioner of Building, on On-street parking in residential areas. Due to the lateness of the meeting, it was suggested by Councillor Cook that this matter be deferred to the next meeting.

C.03.03

F.06.04.02

DEFERRED

August 10, 1983

5. Report dated June 15, 1983, from the Commissioner of Engineering and Works, on the timing of the construction of walkways within residential subdivisions.

In his report, Mr. Taylor advised that the Urban Development Institute is now suggesting that instead of requiring walkways to be constructed prior to the issuance of the building permits for the abutting lots in order to alert purchasers to their existence, walkways now be constructed following construction of the adjacent residences. With today's reduced sized lots, these walkways are being damaged when the neighbouring houses are constructed.

Mr. Taylor therefore recommended:

- a) That future Servicing Agreements for residential plans of subdivisions involving the construction of walkways:
 - i) not require the construction of such walkways prior to the issuance of building permits for adjacent lots
 - ii) require the developer to clearly sign the location of all such walkways prior to the issuance of building permits within the concerned subdivision to the satisfaction of the Commissioner of Engineering and Works
 - iii) require a restriction be placed on the title of lots adjacent to such walkways which would prohibit the transference of said lots to private homeowners until the walkway has been constructed to the satisfaction of the Commissioner of Engineering and Works at which time the City Clerk is to provide a release on title to said restriction.
- b) That future Financial Agreements or Drainage and Occupancy Agreements for residential plans of subdivisions involving the construction of walkways, contain advisement to the owners and future owners of lots adjacent to walkways that they abut a walkway.

A.00.02.01

See Recommendation #35 (Councillor R. Skjarum)

ADOPTED

August 10, 1983

6. Summary of Unfinished Business relating to the Public Works Committee as of August 10, 1983.

It was moved by Councillor Skjarum that the Summary of Unfinished Business be received for information, with the deletion of Request for Report 51-83, previously dealt with by General Committee Recommendation 745-83 adopted by Council on June 13, 1983, and the deletion of Requests for Reports 133-83 and 134-83 with respect to Lisgar dealt with at this meeting.

A.03.04.06

See Recommendation #36 (Councillor Skjarum)

RECEIVED

RECOMMENDATIONS: As per Report No. 7-83

ADJOURNMENT: 12:05 p.m.

Christine Dodds

CHRISTINE DODDS, COMMITTEE CO-ORDINATOR
0016C/68C

NOTE: The date of the next meeting (scheduled for September 15, 1983) has been changed.

The next Public Works Committee Meeting will be held

MONDAY, SEPTEMBER 19, 1983 at 9:30 a.m.

REPORT NO. 7-83

TO: The General Committee of the City of Mississauga.

LADIES AND GENTLEMEN:

The Public Works Committee presents its seventh report and recommends:

- 32-83 a) That the following two reports with respect to the "module type" development proposed for Phase 1 of Lisgar District, lands north of Britannia Road, west of Tenth Line, be received:
- (i) Report from the City Solicitor, dated August 4, 1983, on the legal aspects of mutual ownership and the responsibilities involved; and
 - (ii) Report from the Commissioner of Engineering and Works, dated August 4, 1983, on the development proposal and specifically on the length of time that should be set aside to evaluate this type of project before further developments of this nature are considered.;
- b) That the concerns outlined in both of the reports referred to above and the suggestions and concerns expressed at the Public Works Committee Meeting held on August 10, 1983, as set out in the Minutes of that meeting, be referred to the City Solicitor, the City Commissioner of Engineering and Works and to the developer of Lisgar and his representatives, for reports back to the Public Works Committee.
- C.04.07
(38-32-83)
- 33-83 a) That payment for constructing a sidewalk on a major road abutting lands being the subject of a rezoning application be deferred until site plan approval, in the event that the City's Engineering Department feels that the sidewalk is not warranted at the time of the passing of the rezoning by-law;
- b) That a clause worded to the satisfaction of the City Solicitor be incorporated into the Financial Agreement for the lands being rezoned noting that the payment for constructing a sidewalk on the abutting major road be required as a condition of site plan approval.

A.00.02.01
(38-33-83)

August 10, 1983

- 34-83 a) That a system of changeable speed signs on roadways adjacent to schools within the City of Mississauga not be implemented.
- b) That a system whereby signs are erected and flashers activated for school children at a school crossing or pick up area, not be implemented as it is not permitted under The Highway Traffic Act.

F.06.04.02
(38-34-83)

- 35-83 a) That future Servicing Agreements for residential plans of subdivisions involving the construction of walkways:
- i) not require the construction of such walkways prior to the issuance of building permits for adjacent lots;
- ii) require the developer to clearly sign the location of all such walkways within the concerned subdivision to the satisfaction of the Commissioner of Engineering and Works prior to the issuance of building permits;
- iii) require a restriction to be placed on the title of lots adjacent to such walkways which would prohibit the transference of said lots to private homeowners until the walkway had been constructed to the satisfaction of the Commissioner of Engineering and Works, and the City Clerk has provided a release on title to said restriction once it has been complied with.
- b) That Financial Agreements or Lot Drainage and Occupancy Agreements for residential plans of subdivisions involving the construction of walkways, which have not reached final Engineering Submission Stage as of August 17, 1983, contain advisement to the owners and future owners of lots adjacent to walkways that they about a walkway and of the above requirements in the Servicing Agreement.

A.00.02.01
(38-35-83)

- 36-83 That the Summary of Unfinished Business relating to the Public Works Committee as of August 10, 1983, be received for information.

A.03.04.06
(38-36-83)

THE CORPORATION OF THE CITY OF MISSISSAUGA

A G E N D A

PUBLIC WORKS COMMITTEE

MONDAY, SEPTEMBER 19, 1983 AT 9:30 A.M.

COMMITTEE ROOM A

MEMBERS:

Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield

PREPARED BY: Clerk's Department
DATE: September 15, 1983

COMMITTEE MEMBERS ARE REQUESTED TO CONTACT THE APPROPRIATE DEPARTMENT HEADS
PRIOR TO THE MEETING IF GREATER EXPLANATION OR DETAIL IS REQUIRED WITH REGARD
TO ANY ITEM ON THE AGENDA.

15C/68C

INDEX, PUBLIC WORKS COMMITTEE AGENDA, SEPTEMBER 19, 1983

<u>ITEM #</u>	<u>FILE #</u>	<u>SUBJECT</u>
1.	C.04.07	Private Lane Residential Development - Lisgar Development Concept Plan
2.	C.03.03 F.06.04.02	On-Street Parking in Residential Zones
3.	F.05.04.01	Summer Garbage Collection
4.	A.00.02.01	Signing of Townhouse, Apartment, Commercial, School and Park blocks within residential plans of subdivision.
5.	A.03.04.06	Summary of Unfinished Business

CITY OF MISSISSAUGA

PUBLIC WORKS COMMITTEE

MONDAY, SEPTEMBER 19, 1983
COMMITTEE ROOM A AT 9:30 A.M.

A G E N D A

MATTERS FOR CONSIDERATION:

1. Report from the City Solicitor, dated September 15, 1983, on legal implications of the residential development in a subdivision where access to the privately owned residential lots is off a private road owned mutually by a group of owners who must all use the same roadway to access their properties. This report is an up-date on the investigations being conducted by the City Solicitor and the Commissioner of Engineering and Works into the concerns outlined at the Public Works Committee Meeting held on August 10, 1983, with respect to the "module type" development proposed for Phase 1 of Lisgar District.

In his report, the City Solicitor reviews some of the legal problems and the suggested solutions brought forward at the previous Public Works Committee meeting in addition to suggestions that have emanated from meetings with the developer and his solicitors. Included in the report are extracts from a document entitled "Private Roads - Planning Guidelines for Municipalities" published in March, 1982 by the Ministry of Municipal Affairs and Housing. These extracts deal with the financial implications of property owners pressuring their municipality to accept ownership of their roads and to maintain them, and the legal aspect of whether or not the roads are in fact public or private.

The City Solicitor recommends:

1. Should the Committee see any merit in the private road concept, then a comprehensive study of the planning, financial and legal implications for the municipality should be undertaken.
2. In the alternative, the project should be considered under the authority of The Condominium Act.

C.04.07

RECOMMEND ADOPTION

2. Joint report dated May 18, 1983, from the Commissioner of Engineering and Works and the Acting Commissioner of Building, on On-street parking in residential areas. In March of 1982, the Public Works Committee had discussed the problems and complaints received concerning on-street parking adjacent to multi residential areas and been advised that a Staff Committee of representatives from the Engineering, Building and Planning Departments was reviewing the matter and would be reporting back to them. In addition, in May of 1983, the By-law Committee of Council asked that on-street parking in single family residential areas also be addressed.

September 19, 1983

Item 2 (Continued)

In their report, the Commissioner of Engineering and Works and the Acting Commissioner of Building advise that the staff Committee have identified 50 locations on 19 streets where on-street parking is occurring adjacent to multi family residential areas. These situations have been investigated to find out why on-street parking is being used, i.e. two to three vehicles per family, garages being used for storage or other uses, insufficient on-site parking, etc. and a number of options to address the long term parking of vehicles on roadways are outlined.

The report recommends:

- a) That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified.
- b) Additional parking control staff be provided for enforcement of Recommendation (a) above.
- c) The Planning Department review current parking requirement standards.

Also attached to the Agenda is a copy of a letter from Mr. R. A. McPhail, 1480 Robillard Road, requesting an amendment to By-law 444-79, the City of Mississauga Traffic By-law, to permit overnight parking on City streets when snow removal vehicles are not at work. This letter is referred to the Public Works Committee for its information by Councillor Marland.

On July 6 and again on August 10, 1983, the Public Works Committee meetings ran late and this matter was deferred for consideration at this meeting.

C.03.03
F.06.04.02
RECOMMEND ADOPTION

3. Report from the Commissioner of Engineering and Works, dated September 14, 1983, regarding summer garbage collection. The Commissioner attaches to his report a letter from the City's garbage contractor, Robran Construction Limited, in response to inquiries received by the Engineering Department, either directly from residents or through Members of Council, on the feasibility of instituting an additional summertime garbage pick-up with the related costs directly borne by the recipients of the service.

Since there are a number of issues not addressed in the letter from Robran Construction Limited, Mr. Taylor recommends:

That the Commissioner of Engineering and Works prepare a report to the Public Works Committee with respect to summer garbage pick-up at the expense of the ratepayers payable in advance of the service.

F.05.04.01
RECOMMEND ADOPTION

September 19, 1983

4. Joint report from the Commissioner of Planning and the Commissioner of Engineering and Works, dated September 12, 1983, regarding the signing of townhouse, apartment, commercial, school and park blocks within residential plans of subdivision.

In their report, the Commissioners advise that in the vast majority of residential plans of subdivision involving a mixture of land uses, the single family and semi-detached units are built and occupied well before the development of townhouse, apartment, commercial, school and park blocks. This development staging has led to numerous complaints from residents that they were not aware that certain lands, vacant at the time of their purchase, would be developed as townhouses, apartments, commercial development, a school or a park.

In order to reduce these complaints, the Commissioners of Planning and Engineering and Works recommend:-

That future Servicing Agreements for residential plans of subdivision involving a mixture of land uses, require the developer to erect and maintain signs on future townhouse, apartment, commercial, school, and park lands indicating the future use and the telephone number and the name of the City of Mississauga Department where additional information is available, and that such signing is to be carried out to the satisfaction of the City prior to the execution of the related Servicing Agreement.

A.00.02.01
RECOMMEND ADOPTION

5. Summary of Unfinished Business relating to the Public Works Committee as of September 19, 1983.

A.03.04.06
RECOMMEND RECEIPT



City of Mississauga

MEMORANDUM

To: CHAIRMAN AND MEMBERS OF THE PUBLIC WORKS COMMITTEE
From: L. W. Stewart, Q. C.
City Solicitor
Dept. _____
REGISTRY NO. 11636

DATE SEP 16 1983

FILE No. C0407

CLERK'S DEPARTMENT

15th September, 1983.

P. W. DATE SEPT. 19. 1983

SUBJECT:

Private Lane Residential Development
Lisgar District

ORIGIN:

Request for Report No. 163-83
Public Works Committee, August 10th, 1983

COMMENTS:

This is to be considered an interim update on the report dated August 4th, 1983, further to the Committee's direction and request for report which was issued out of its August 10th meeting.

At the Public Works Committee meeting of August 10th, 1983, "It was agreed that the Public Works Committee would sponsor an inquiry and the developer was asked to research and investigate other projects throughout Canada and the USA to determine and compare the number of units and costs; ultimate cost of homes; length of time the developments had been in existence; problems encountered by the local and regional governments, and methods used to govern and enforce the servicing and maintenance of commonly held elements within the developments."

I assume the City can then be informed of these "other projects", can secure information thereto, and then, if necessary, arrange to visit such projects. A list should be obtained from the proposed developer.

With regard to "private road development" in the United States I am informed that two elements are paramount; 1. such developments are usually exclusive and expensive, and 2. they stress privacy and security. To a certain extent these elements pertain to many private road developments in Canada but there is no necessity for such

requirements in Mississauga. What is necessary is that a private lane project "work" in the way that the Lorne Park Estates has functioned. A private lane project must not become a burden and a problem to the eventual residents, and to the City in terms of the City being required to spend time and money on private problems.

Mr. Rumm mentioned at the meeting of August 10th, 1983, that he did not want to "go condo" because it is not well accepted in Canada, although he did admit it is well accepted in Europe. He said the idea of private roads is not experimental and he referred to Lorne Park Estates. I could certainly recommend a "Lorne Park" type of development, 79 homes in a 77 acre private development, on 66 foot private roads, (one road is 80 feet wide reducing to 55 feet, I believe) that has been developed since 1879. A legal Corporation collects fees and makes decisions regarding roads, services, common expenses, repairs, maintenance and other necessary common interests. Lorne Park Estate is therefore very similar to a condominium operation and it seems that the individual owners have found it necessary to have a Corporation to carry on the necessary work and make the necessary decisions. Lorne Park Estates is therefore an example of the necessity for a condominium development for a private lane concept as proposed by Mr. Rumm.

At the August 10th Public Works Committee meeting much was said about positive and negative covenants and English Courts decisions. Such English decisions have not been accepted by Canadian courts. Positive covenants do not run with the land and therefore responsibilities to do certain works cannot be passed on to successive owners. (In fact, resales might be difficult, except at bargain prices, if a narrow private lane concept with special covenants was developed). Lawyers for prospective buyers could be concerned as legal requisitions with regard to certain covenants may be declared "not to go to the root of title", and therefore a "structure" of positive covenants would not be enforceable. We have had some experience wherein prospective buyers and mortgage lenders are less interested with houses built on private roads. One can imagine that aspect and other problems of legal liability as a source of expensive litigation (for contribution to common expenses, accidents, lane blockages, flooding, etc.).

It has also been said that if a private lane concept of development was to be allowed it should be applied to all of Mississauga. In other words if it has merit a similar number of units should be allocated to each and every ward in the City on an experimental basis, after a comprehensive study was made, and after a special zoning category was devised.

Two matters of consequence have occurred since the August 10th Committee meeting.

MEETING WITH DEVELOPER'S SOLICITOR

Firstly, another meeting was held with the developer's solicitor at which further suggestions were made on behalf of the developer to meet the concerns expressed by City staff. The developer has proposed offering to purchasers a three year guarantee on the surface of the laneway (the City would, as part of its normal servicing policy, require a three year above-ground services maintenance guarantee in any event). As well, the developer proposes to reserve a right-of-way over the lane for a period of ten years. This interest would apparently be used to help form committees of owners to deal with road maintenance issues, with a developer's representative joining as a seventh member to assist in resolving potential conflicts. The developer would secure acknowledgments from the purchasers that the lane is private and not a municipal responsibility. Each owner would be required to maintain liability insurance including the lane. Finally, the creation of a rentcharge is proposed to deal with the collection of contributions for repair and maintenance of the lane. Rentcharges originated in England but have largely fallen into disuse in the modern era. The concept involved a perpetual payment to the lord of the manor and operated as a form of lien on the land. These latest proposals seem to be similar to some aspects of condominium ownership.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

In March of 1982, the Ministry of Municipal Affairs and Housing published a document entitled "Private Roads - Planning Guidelines for Municipalities". This document has come to our attention. The following statements are found at the outset of the paper. "There are many potential local and provincial problems where private roads provide access to development.

Accordingly, the ministry discourages any development on existing and new private roads in the absence of: - a comprehensive study of the planning, financial and legal implications for the municipality, and - approved official plan policies on this type of access based on that comprehensive study".

The most salient aspect of the paper for Mississauga is articulated under the heading of Private Road Problems - Financial. It is extracted herein in total.

FINANCIAL

"Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- seasonal residents may desire year round access to permit them year round occupancy, and
- residents may perceive the municipality as a provider of the services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as a public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

The paper refers to legal issues as follows:

LEGAL

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provisions of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

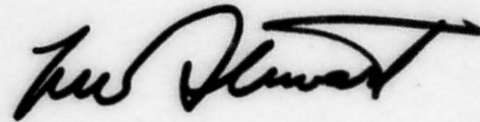
Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads."

The Provincial position paper underlines the fact that the public highway is the medium by which the usual municipal services, for which the landowner pays taxes and elects council representatives, are made available. Specific reference is made to

police protection, snow plowing, school busing and garbage collection. Furthermore, it is quite clear that an absolutely full and comprehensive study must be undertaken with respect to the long term effects of such development prior to establishing any policy on private roads for the municipality.

RECOMMENDATION:

1. Should the Committee see any merit in the private road concept, then a comprehensive study of the planning, financial and legal implications for the municipality should be undertaken.
2. In the alternative, the project should be considered under the authority of the Condominium Act.



L. W. Stewart, Q. C.,
City Solicitor.

GSS/LWS/jalf
cc: E. Halliday
0386L/4L



City of Mississauga

MEMORANDUM

FILE: 11 141 00039
13 111 00003

2

To: Chairman and Members
of Public Works
Dept.

RECEIVED

From

William P. Taylor-Engineering
A. Franks - Building

REGISTRY No. 5737

DATE MAY 25 1983

C.03.03

FILE No. F.06.04.02
CITY OF MISSISSAUGA DEPARTMENT

P. W. DATE JULY 6, 1983

May 18, 1983

P. W. DATE AUG 10 1983

SUBJECT: On-Street Parking in Residential Areas

ORIGIN: Public Works Committee
Report Request No. 71-82

P. W. DATE SEPT. 19, 1983

COMMENTS: In order to review areas where on-street parking problems are being experienced a staff committee was formed with representatives from the Engineering Department, Building Department and Planning Department.

The Building Department identified some 50 locations on 19 streets where on-street parking is occurring adjacent to multi family residential areas. These areas included apartment, and townhouse developments.

By-Law Committee at its meeting of May 12, 1983, requested that the issue of on-street parking in single family residential areas also be addressed.

The problem associated with the control of on-street parking on roads adjacent to multi family residential areas has been reviewed a number of times in the past. In 1979, a schedule was included in the Traffic By-Law to permit parking in excess of the three hour maximum time period. The Condominium Corporation situated at the northwest corner of Glen Erin Drive and Gananoque Drive had requested permission to park on the street to relieve an on-site parking deficiency. Since that time similar requests have been received throughout the City and other streets have been exempted from the City wide three hour maximum parking limit. At this time the areas exempt from the three hour limit are not signed as it was felt when this system was set up that signing would encourage others to park in the area thereby taking away space which was made available to meet a particular need for a specific development.

As indicated above some 50 locations were identified by the Building Department. The Engineering Department conducted a comprehensive review of the 50 locations which

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Chairman and Members of
Public Works

COMMENTS: (Continued)

were identified as problem areas with respect to insufficient on-site parking facilities. On-site inspections were made, site plans where available were obtained and reviewed. Also, where possible the superintendents and property managers were contacted for their comments.

In paraphrase, the following are examples of comments received during our review:

- some superintendents said "they were not aware of a shortage of parking, they had received no complaints from tenants and they even had a few vacant spaces". this comment, while deemed accurate, only occurred in a very low percentage of the sites visited.

Other comments which were received which point to the reasons for the parking problems were:

- "there is insufficient on-site parking 125% or 150%"
- "many families had 2 or more cars"
- "garages were used in many cases for storage or for purposes other than vehicle parking"
- "some people leave cars on the road because it was closer to their apartment and they could keep an eye on it". In relation to this comment there was one specific case where a tenant experienced malicious damage to his vehicle while parked in the parking lot; he now parks it on-street where he can see it from his apartment
- "some tenants park their vehicles on-street to avoid paying the monthly parking fee". Some superintendents commented that these people feel that paying for 1 or 2 parking tickets per month is still cheaper than paying for a parking space. Generally, the three hour parking limit is enforced only upon receipt of a complaint.
- "women were afraid to use underground parking garages"

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Chairman and Members of
Public Works

COMMENTS: (Continued)

- "there appeared to be a general lack of visitor parking in most of the areas visited"
- "parking on the street is more convenient"

The above comments represent what we have found to be a good representation as to the reasons for the current problem on a City wide basis.

We have found during this period of review that developments fairly recently approved are also experiencing some parking problems. These problems are developing for basically the same reasons as previously mentioned, i.e. two to three vehicles per family, garages not being used for parking purposes, insufficient on-site parking for senior citizen buildings, etc.

There are a number of options available to address the long term parking of vehicles on roadways. These options are as follows:

Option 1

Keep the existing system of removing the three-hour maximum parking limit on a selected basis with no signing

Option 2

Exempt certain areas of roadways from the three-hour maximum parking limit and sign the exempted areas.

Option 3

Eliminate the three-hour maximum limit on a City wide basis and permit long term parking on roadways except where a prohibition of parking is recommended for traffic flow or other reasons.

Option 4

Institute Permit Parking on a selected basis.

Permit parking was addressed in a report to Public Works dated May 11, 1979. This report recommended against permit parking and suggested the current system of specific exemptions from the three-hour maximum parking limit. It

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Chairman and Members of
Public Works

COMMENTS: (Continued)

is felt that the City should not institute a system of permit parking. In general, residential developments have reasonable off-street parking facilities and where there are problems, it is felt that satisfactory arrangements can be made for the provision of additional on-site parking or by the provision of an exemption from the three-hour maximum parking limit. The areas which are experiencing the on-street parking problems are not as intensive as the problems which are being experienced in the City of Toronto which has the permit system. The administration and enforcement of a permit system is complex and if a system of permit parking is instituted very strict criteria would have to be established. Additional staff would be required for both the administration and the enforcement of such a system.

Option 5

Install On-Street Metered Parking

This would involve the placing of on-street parking meters in areas where long term overnight parking is required. This would be suitable in areas adjacent to higher density residential areas where there would be enough demand. This option would require considerable capital investment, however, the anticipated revenues would result in a payback in approximately two years. This system would require substantial enforcement in order to ensure that there would be no freeloading. Increased parking enforcement officers would be required.

From our review it is evident that a system to permit long term on-street parking should be instituted in a limited site specific manner. Also, it is evident that additional By-Law enforcement staff would be required to make any system function satisfactorily.

Any system that is implemented should be evaluated by the City based on actual need. If additional on-site parking can be provided, for example, by reducing open space (not below a reasonable level), or by re-marking an existing parking area to reflect the new parking space dimensions, this should be done before any consideration is given to exempting a roadway from the three hour limit.

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Chairman and Members of
Public Works

COMMENTS: (Continued)

It is suggested that the City institute a selective system of eliminating the three-hour limit on certain roadways and that alternate side parking be provided where possible and that the appropriate signing be installed. This alternate side parking would be permitted on one-side of the roadway between 7pm and 7am and then on the other side of the roadway between 7am and 7pm. There are areas where it may not be feasible to institute an alternate side parking system for example, where there is a multi family residential development across from single family residential development. In this case it is felt that it is more appropriate to have the on-street parking limited to the side of the road adjacent to the multiple family development and to prohibit the parking on the side of the single family development.

With this system staff will have to evaluate each request with respect to the following criteria:

- the need for the on-street parking
- the possibility and feasibility of providing additional on-site parking
- suitability of adjacent roadway to accommodate on-street parking.

If the above criteria are satisfied then staff would prepare a report recommending an exemption from the three-hour limit with the appropriate alternate side parking being provided.

This system would be appropriate for use in both multi family and single family residential areas.

It has also come apparent that the current parking requirements should be reviewed with respect to their adequacy particularly as they relate to senior citizen apartments.

- RECOMMENDATIONS:
1. That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified.

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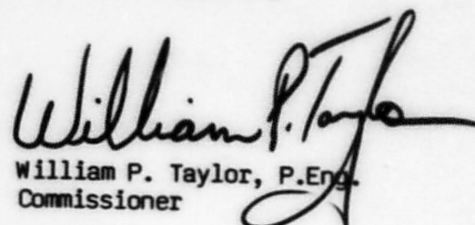
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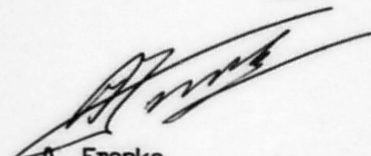
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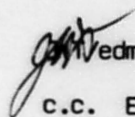
Chairman and Members of
Public Works

RECOMMENDATIONS: (Continued)

2. Additional parking control staff be provided for enforcement of Recommendation #1.
3. The Planning Department review current parking requirement standards.


William P. Taylor, P.Eng.
Commissioner


A. Franks
Building Department


C.C. E. M. Halliday
0058E/7E

2F

1480 Robillard Road
Mississauga, Ontario
L5J 3K4

City of Mississauga
Attention: Councillor Marland
1 City Centre Drive
Mississauga, Ontario

P. W. DATE JULY 6. 1983

P. W. DATE AUG 10. 1983

Gentlemen:

By-Law 444-79

P. W. DATE SEPT 19. 1983

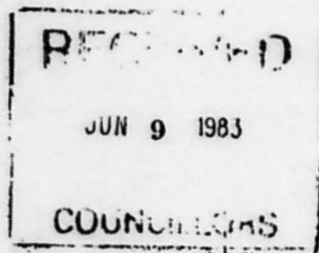
I have been advised that Section 8-(j) of the above city by-law prohibits parking on city streets for periods of three consecutive hours. While this may be a necessity during ^{certain} times of the year and/or because of maintenance activity or traffic patterns, overzealous enforcement during the spring, summer, and fall in residential areas such as the one in which I live can cause problems. This is compounded by the city's policy of not releasing the names of persons who complain and force the parking enforcement crews to respond. Your office has been made aware of an ugly situation which has developed on Robillard Road because of the wording of the by-law and the secrecy policy.

I appeal to you for help. The same situation probably exists in other parts of the city. To help resolve, or at least shrink the problem. I suggest that the by-law be amended to permit overnight parking during that time of the year when snow removal vehicles are not at work. Other municipalities have such regulations and they seem to work well.

A reply as to what action can be taken is requested.

RAM:1md

R.A. McPhail
R.A. McPhail





City of Mississauga

MEMORANDUM

FILE: 11 141 00039
15 111 00010

To Chairman and Members of the From William P. Taylor, P.Eng.
Dept. Public Works Committee 11621 Dept. Engineering and Works

F-0504-01

September 14, 1983

P. W. DATE Sept. 19. 1983

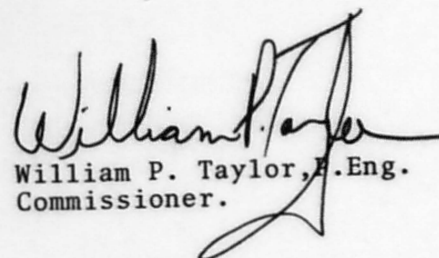
SUBJECT: Summer Garbage Collection.

ORIGIN: Engineering and Works Department.

COMMENTS: The attached letter received September 8, 1983 from Robran Construction Limited deals with summer pickup of garbage and the costs related to same.

There are a number of issues not addressed in this letter which should be investigated by this department, including the length of time summer pickup would last, i.e. June, July and August, or July and August.

RECOMMENDATION: That the Commissioner of Engineering and Works prepare a report for the next Public Works meeting with respect to summer pickup of garbage at the expense of individual ratepayers, such costs to be paid in advance of the service being rendered.


William P. Taylor, P.Eng.
Commissioner.

WPT.mh
att.

c.c. E. M. Halliday



151 MAIN ST. EAST, BOX 220, GRIMSBY, ONTARIO L3M 4G3

Mr. A. E. MacDonald P. Eng.
Director of Maintenance Engineering
The Corporation of the City of Mississauga
1 City Centre Drive
Mississauga Ontario

TELEPHONE: (416) 948-2267
or (416) 563-4584

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ENGINEERING WORKS & BLDG. DEPT.	
RECEIVED FILE	
SEP - 8 1983 <i>by hand</i>	
Route To	Initials
<i>Attn - Eng. Secy</i>	<i>WJ</i>
<i>3R3</i>	<i>83/09/09</i>

Dear Sir

The following proposal for additional seasonal pick-up is submitted for your consideration.

In order to establish prices a survey (via newspaper or radio) , at the city's cost, would be conducted to establish participation and interest. Having established this and providing it met the minimum requirements, the service would be advertised with prices indicated.

It would be required that payment be received at least two weeks prior to the commencement of pick-up.

The scheduling for the additional pick-up would be as follows:

Monday's area would be serviced Thursday
Tuesday's " " " Friday
Thursday's " " " Monday
Friday's " " " Tuesday

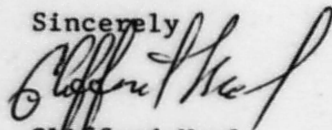
A six bag limit would be imposed through necessity and no scrap would be incorporated into the additional pick-up.

It is felt that due to the commitment placed on the Contractor the City would be prepared to guarantee a minimum of 300 stops per day and that this figure be considered essential as the minimum before committing to the service. The rates for the service would be established as a result of information obtained from the city's survey however, the following estimates are submitted for your edification.

Based on 300 stops	-	\$ 8.14 per stop
300 to 600 stops	-	\$ 6.34 per stop
600 +	-	\$ 4.64 per stop

I trust this will be of assistance in determining the
feasibility of the service.

Sincerely

A handwritten signature in cursive script, appearing to read "Clifford Neal".

Clifford Neal
General Manager

CN/nb



City of Mississauga

MEMORANDUM FILES: 14 111 00001
11 141 00039

To Chairman and Members of From W.P. Taylor / R.G.B. Edmunds
Dept. Public Works Committee 11620 Dept. Engineering / Planning

DATE SEP 15 1983

P. W. DATE **SEPT. 19. 1983**

TIME 10:02:01

September 12, 1983

SUBJECT: Signing of townhouse, apartment, commercial, school and park blocks within residential plans of subdivision.

ORIGIN: Engineering and Works Department and Planning Department.

COMMENTS: In the vast majority of the residential plans of subdivision involving a mixture of land uses, the single family and semi-detached units are built and occupied well before the development of townhouse, apartment, commercial, school, and park blocks.

Such development staging has led to numerous complaints from residents indicating that they were not aware that certain lands, vacant at the time of their purchase, would be developed as a townhouse, apartment, commercial, school, or park.

To reduce these complaints and to ensure that such residents know where information on such lands can be obtained, we recommend that signs, to a standardized design and format prepared by the Planning Department, and constructed to the satisfaction of the Commissioner of Engineering and Works be erected and maintained by the developer on such lands prior to the execution of a Servicing Agreement for a residential plan of subdivision and that this requirement should be included in future Servicing Agreements.

This signing, in the case of townhouse, apartment, commercial and school lands, would identify the proposed use and indicate that zoning information is available from the City Planning Department.

In the case of a park block, the sign would stipulate the future use and that additional information is available from the Recreation and Parks Department.

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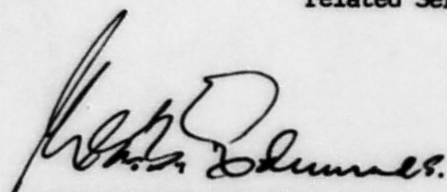
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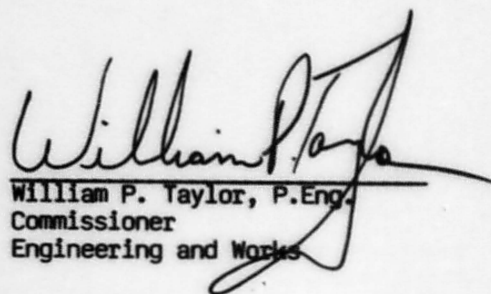
September 12, 1983

Chairman and Members of
Public Works Committee

RECOMMENDATIONS: That future Servicing Agreements for residential plans of subdivision involving a mixture of land uses, require the developer to erect and maintain signs on future townhouse, apartment, commercial, school, and park lands indicating the future use and where additional information is available, and that such signing is to be carried out to the satisfaction of the City prior to the execution of the related Servicing Agreement.



R. G. B. Edmunds
Commissioner
Planning Department



William P. Taylor, P.Eng.
Commissioner
Engineering and Works

 cc
0235E/7E

cc: E. M. Halliday
Ian W. Scott

PUBLIC WORKS COMMITTEE
DATE: SEPTEMBER 19, 1983

SUMMARY OF UNFINISHED BUSINESS

128C/17C

Page 1

REQUEST NO.	REPORT REQUESTED FROM	SUBJECT	SOURCE	DUE DATE	NO. OF REVISIONS
163-82	Eng. & Works	Second Assessment of "rippled" pavement used as a speed deterrent on roadway at Mineola Rd. E. and Indian Road	Public Works - May 20/82 Public Works - July 6/83		
135-83	Eng. & Works	Feasibility of installing flashing amber lights at bus stops on North and South Service Roads	Transit Comm. - July 8/83		
163-83	Eng. & Works Legal	Concerns expressed by staff and Public Works Committee on a "module type" Development Concept Plan	Public Works - Aug. 10/83		

5

PRIVATE ROADS

PLANNING GUIDELINES FOR MUNICIPALITIES



Ontario

Ministry of
Municipal Affairs
and Housing

March 1982

Hon. Claude F. Bennett, Minister
R.M. Dillon, Deputy Minister

Additional copies available from:
Ontario Government Bookstore
880 Bay Street
Toronto, Ontario M7A 1N8
Price: \$2.00 payable in advance
to Treasurer of Ontario

1.0 INTRODUCTION

Recently there has been increased interest in development with road access other than publicly owned and/or maintained roads.

There are many potential local and provincial problems where private roads provide access to development. Accordingly, the ministry discourages any development on existing and new private roads in the absence of

- . a comprehensive study of the planning, financial and legal implications for the municipality, and
- . approved official plan policies on this type of access based on that comprehensive study.

These guidelines are intended to help municipalities develop a position on private road development by identifying potential private road problems and the kind of information that should be collected and examined for the municipal study.

For the purposes of these guidelines, a private road is any road not available for use by the general public since it is privately owned and maintained. This means any road not publicly owned and/or maintained.

Contact with the ministry's Community Planning Advisory Branch and Community Planning Review Branch before the study begins is highly recommended. Early discussion with these branches will confirm the specific information needed for the study based on local circumstances. These discussions can save a municipality from unnecessary work and expense in their study by tailoring the research required to local information sources and conditions. The completed study should also be discussed with these branches to resolve any ministry concerns before planning changes are made. Funding for the review may be available through the Community Planning Advisory Branch.

Most of the information needed for the study should exist in municipal records and can be used effectively by local staff. Useful sources include existing land use maps, building permit records, assessment rolls and the knowledge of the roads superintendent and solicitor.

2.0 PRIVATE ROADS PROBLEMS

2.1 Financial

Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- . private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- . landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- . seasonal residents may desire year round access to permit them year round occupancy, and
- . residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard

if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

2.2 Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal

status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads.

2.3 Land Use Planning

Private road problems are described more easily in financial and legal terms rather than in planning terms. However, the planning framework (i.e. official plan and zoning by-law coverage) provides an established way of making a formal municipal position and complementary controls over development on private roads using public input.

Some aspects of private roads do pose land use planning problems. Private roads are largely associated with seasonal residential uses in recreational areas. Demand for municipal ownership and maintenance of these roads is low where the development serviced is, and remains, seasonal. However, conversion to permanent residential use increases demands for higher levels of services, similar to those in other parts of the community. The municipality should anticipate areas of conversion and establish appropriate policies and controls.

Without addressing the land use implications of private roads and developing a corresponding policy, the chances of successfully enforcing a municipal position and controlling the adverse effects of private roads are slim. While an official plan's land use distribution may be sound, without private roads policies the plan would be an incomplete base for municipal action. Once established, these policies can be followed up in a number of ways. Seasonal zoning is one of the planning tools used in trying to control the effects of private roads. While the legal basis for this zoning is sound, the ministry

realizes the difficulties that can be involved in effectively enforcing these by-laws. Further, official plan policies on capital works prohibiting the provision of municipal services on private roads can help municipalities deal with pressure to provide services before the consequences of this are explored. The Planning Act requirement that no public work be undertaken for any purpose not conforming to the official plan lends weight to these policies.

3.0 COMPONENTS OF THE COMPREHENSIVE STUDY

The local study is intended to help the municipality assess its private roads situation and, if necessary, develop an official plan policy to deal with it. The questions which this guideline suggests are designed to show whether any of the problems described earlier exist or could result from the use of private roads as access to development.

Based on the comprehensive study, a municipality may decide not to allow development on private roads at all. Municipalities deciding to allow such development should assess the effectiveness of the controls and determine whether changes are required.

The study should address these three private roads issues:

- . land use planning
- . financial
- . legal

The conclusions of the study should clearly

- . confirm whether there are or may be problems with private roads in the municipality or not

- . identify the nature, extent and effect of those problems
- . indicate the municipal position on private roads based on the findings of the study, and
- . identify alternate official plan policies, zoning approaches and any other relevant regulatory tools needed to implement the municipal position on private roads.

The study should contain answers to the questions set out below unless some of them are clearly not pertinent to the municipality. The study can go beyond these questions if considered useful.

3.1 Land Use Planning

- . Are there private roads in the municipality? Where are they? A map showing private and public roads separately should be prepared at a scale allowing measurement of their lengths. What determines the categorizing of a road as private on the map?
- . Choose a representative period for the study (e.g. the last five years).
- . How many seasonal dwellings, permanent dwellings and vacant lots are there on private roads? How many lots used for some other purpose exist on private roads? What percentage of private road frontage is vacant or used for something other than residential use (separate figures)? How many severances have been granted on private roads?
- . How many building permits have been issued in the municipality in the study period? Of this total, how many permits have been issued for lots with private road access? Is the rate of building on lands with private road access increasing?

- . About how many residential units on private roads have been converted from seasonal to permanent use in the study period? Are these conversions concentrated or scattered throughout the municipality?
- . Has the maintenance of any private road(s) been assumed by by-law in the study period? Does the municipality intend to assume by by-law maintenance of any private road(s) in the foreseeable future? Please indicate the approximate length and location on the map prepared. Has the municipality had any requests to assume the maintenance of private road(s) in the study period? What services, if any, does the municipality provide to private road(s) now?
- . Do the municipality's official plan and zoning by-law explicitly address private roads and conversion from seasonal to permanent residential use? If so, how?

Answers to these questions will describe the existing situation regarding private roads. They will also indicate if private road development forms a significant and growing amount of the municipality's growth. Reviewing the existing planning controls together with the trend in private road development will show whether those controls are adequate or should be changed.

3.2 Financial

- . What would be the approximate, current cost to bring each private road up to minimum Ministry of Transportation and Communications subsidy standard? How much would the associated costs of surveys, land acquisition, deed preparation and any other costs be?
- . Who would pay these costs if these roads become public and why? If the municipality is going to pay these costs, how

are they going to be recovered? (The ministry's Field Services Branch, whose offices are listed at the end of this publication, are prepared to report the impact of a specific expense on a municipality's financial position. Such reports can be made available to municipalities who request them and can outline the cost associated with a particular work).

- . What would be the anticipated municipal costs per year to maintain a kilometre of road at Ministry of Transportation and Communications subsidy standard?
- . How would the municipality pay for the maintenance costs of the larger of the following:
 - private roads for which the municipality intends to accept dedication and maintenance responsibility in the foreseeable future, or
 - private roads which legally may be found to be public and to have been assumed by the municipality as a result of the provision of municipal services.
- . If the municipality intends to provide services on private roads but not to assume those roads, how would the municipality pay for these services and would any legal problems be created?

3.3 Legal

- . Do the actions of private road owners and the municipality create any legal grounds for claims that a private road has become a public road? (In addition to answering this question, the municipal solicitor may have relevant comments on the conclusions of the review).

3.4 The Conclusion of the Study

- . Has the study confirmed the existence or potential for any of the problems described earlier? If so, what problem or combination of problems might there be?
- . Based on the findings of the study, what should be the municipal position on private roads as a means of access to development?
- . If the official plan policies, zoning by-laws or other available regulatory means do not ensure that the municipal position can be achieved, what specific changes are required?

The last question of the study is the first step toward developing effective controls recognizing the variety of problems private road access can cause. To help you answer this question the Community Planning Advisory Branch and the Community Planning Review Branch are prepared to discuss the private roads review and possible planning controls. Early and frequent contact with these branches can ensure that the study is done with a minimum of problems and maximum benefit. Municipalities are encouraged to use this resource to assist them.

This study exercise and follow-up can result in reasonable controls over private roads, acceptable to both the municipality and the province.

The Community Planning Advisory Branch has offices at the following locations:

Central Region
2nd Floor
47 Sheppard Avenue East
Willowdale, Ontario M2N 2Z8
Telephone: (416) 224-7635
Zenith 52650

CITY OF MISSISSAUGA

MINUTES

MEETING #8

NAME OF COMMITTEE: PUBLIC WORKS

DATE OF MEETING: Monday, September 19, 1983

PLACE OF MEETING: Committee Room 'A' at 9:30 a.m.

MEMBERS PRESENT: Councillor D. Culham, Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield
Mayor H. McCallion, arrived at 9:40 a.m. and left at 11:30 a.m.

MEMBERS ABSENT: Mr. J. Rogers, Vice-Chairman

OTHERS PRESENT: Councillor L. Taylor, arrived at 10:25 a.m.

STAFF PRESENT: Mr. W. P. Taylor, Commissioner of Engineering and Works
Mr. A. McDonald, Director, Maintenance Engineering
Mr. B. Barker, Subdivision Control Engineer
Mr. J. Thomas, Traffic & Transportation Engineer
Mr. L. W. Stewart, Q.C., Solicitor
Mr. G. Swinkin, Solicitor
Mrs. C. Dodds, Committee Co-ordinator

MATTERS CONSIDERED:

1. Report from the City Solicitor, dated September 15, 1983, on the legal implications of private lane residential development. This report was an up-date on the investigations being conducted by the City Solicitor and the Commissioner of Engineering and Works into the concerns outlined at the Public Works Committee Meeting held on August 10, 1983, with respect to the "module type" development proposed for Phase 1 of Lisgar District.

In his report, the City Solicitor reviewed some of the legal problems and the suggested solutions brought forward at the previous Public Works Committee meeting, in addition to suggestions that had emanated from meetings with the developer and his solicitors.

The City Solicitor recommended:

1. Should the Committee see any merit in the private road concept, then a comprehensive study of the planning, financial and legal implications for the municipality should be undertaken.
2. In the alternative, the project should be considered under the authority of The Condominium Act.

September 19, 1983

Item 2 continued

The City Solicitor circulated to the Members at the meeting a document entitled "Private Roads - Planning Guidelines for Municipalities" published in March, 1982 by the Ministry of Municipal Affairs and Housing. This report dealt with the financial implications of property owners in private lane developments pressuring their municipality to accept ownership and maintain their roads and also the legal aspect of whether or not the roads are in fact public or private. The report recommended that no development, where access is other than by publicly and/or publicly maintained roads, take place in the absence of (a) a comprehensive study of the planning, financial and legal implications for the municipality, and (b) approved official plan policies on this type of access based on this comprehensive study. The Ministry recommends contact with the Community Planning Advisory Branch and Community Planning Review Branch before any study is undertaken and advises that funding for the review may be available.

It was agreed that the report from the City Solicitor be received as a part of a package being considered by the Committee. Mayor McCallion suggested that a representative from the Ministry attend the next Public Works Committee Meeting, to discuss their publication.

Mention was made of the fact that the Committee and staff were planning to visit private road developments in London, Ontario, that afternoon as a part of the overall study being undertaken.

Mr. Bill Salter and Mr. David Strachan, attending the meeting of behalf of the Lisgar development, asked that the reports be held over to the next meeting to allow the developer to respond and submit the results of other investigations being undertaken. It was requested by Councillor Marland that the response include a comparison of road and servicing costs for a 100-acre conventional subdivision and a 100-acre "module" type development.

It was moved by Councillor Skjarum that the up-date report from the City Solicitor be held over and that a representative from the Ministry of Municipal Affairs and Housing be invited to attend a meeting of the Public Works Committee to discuss their publication dated March, 1982, entitled "Private Roads - Planning Guidelines for Municipalities". This motion carried.

C.04.07

See Recommendation #37 (Councillor Skjarum)

September 19, 1983

2.

Joint report dated May 18, 1983, from the Commissioner of Engineering and Works and the Acting Commissioner of Building, on On-street parking in residential areas. In March of 1982, the Public Works Committee discussed the problems and complaints received concerning on-street parking adjacent to multi-residential areas and was advised that a Staff Committee of representatives from the Engineering, Building and Planning Departments was reviewing the matter and would be reporting back to them. In addition, in May of 1983, the By-law Committee of Council asked that on-street parking in single family residential areas also be addressed.

In their report, the Commissioner of Engineering and Works and the Acting Commissioner of Building advised that the staff Committee had identified 50 locations on 19 streets where on-street parking is occurring adjacent to multi family residential areas. These situations had been investigated to find out why on-street parking is being used, i.e. two to three vehicles per family, garages being used for storage or other uses, insufficient on-site parking, etc. and a number of options to address the long term parking of vehicles on roadways were outlined.

The report recommended:

- a) That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified.
- b) Additional parking control staff be provided for enforcement of Recommendation (a) above.
- c) The Planning Department review current parking requirement standards.

Also attached to the Agenda was a copy of a letter from Mr. R. A. McPhail, 1480 Robillard Road, requesting an amendment to By-law 444-79, the City of Mississauga Traffic By-law, to permit overnight parking on City streets when snow removal vehicles are not at work. This letter was referred to the Public Works Committee for its information by Councillor Marland.

The Commissioner advised the Committee that current social and economic problems were contributing to residential parking problems. Unemployment expanded the size of the family unit and therefore increased the number of cars per resident. Underground parking was not acceptable to many people, particularly at night.

Councillor Cook asked if meter parking had been considered. Mayor McCallion suggested that the City of Mississauga had parking problems that differed from one area to another. Blanket solutions were no longer likely to solve the problems and she recommended that some form of permit parking be tried in specific areas on an experimental basis for a trial period of one year. It was recognized that other problems could arise with permit parking, i.e. How long should a permit be issued? How would people terminate permit if they moved? How would people with permits handle someone parking in their parking area? It was agreed, however, that these could be addressed.

September 19, 1983

Item 2 (Continued)

Councillor Taylor expressed his opinion that the City should not become involved with solution to parking problems until all other avenues had been explored such as multi-residential being required to create more parking space at their own expense on their own property.

It was moved by Councillor Skjarum that the recommendation in the Commissioner's report be adopted with the following additions:-

- d) That the Commissioner of Engineering and Works prepare a report for the consideration of the Public Works Committee on the development of an experimental program for permit parking in specific areas of the City of Mississauga taking into consideration costs, revenues, legal rights, etc.,
- e) That the areas being recommended for the experiments set out in (a) and (d) be depicted on maps of the City of Mississauga for consideration by the Public Works Committee.

C.03.03

F.06.04.02

See Recommendation #38 (Councillor Skjarum)

3. Report from the Commissioner of Engineering and Works, dated September 14, 1983, regarding summer garbage collection. The Commissioner attached to his report a letter from the City's garbage contractor, Robran Construction Limited, in response to inquiries received by the Engineering Department, either directly from residents or through Members of Council, on the feasibility of instituting an additional summertime garbage pick-up with the related costs directly borne by the recipients of the service.

Since there were a number of issues not addressed in the letter from Robran Construction Limited, Mr. Taylor recommended:

That the Commissioner of Engineering and Works prepare a report to the Public Works Committee with respect to summer garbage pick-up at the expense of the ratepayers payable in advance of the service.

Following discussion, it was moved by Councillor Skjarum that in addition to responding to the contents of the letter from Robran Construction, the Commissioner should also report on summer garbage pick-up on a City wide basis.

F.05.04.01

See Recommendation #39 (Councillor Skjarum)

ADOPTED

4. Joint report from the Commissioner of Planning and the Commissioner of Engineering and Works, dated September 12, 1983, regarding the signing of townhouse, apartment, commercial, school and park blocks within residential plans of subdivision.

September 19, 1983

Item 4 (Continued)

In their report, the Commissioners advised that in the vast majority of residential plans of subdivision involving a mixture of land uses, the single family and semi-detached units are built and occupied well before the development of townhouse, apartment, commercial, school and park blocks. This development staging has led to numerous complaints from residents that they were not aware that certain lands, vacant at the time of their purchase, would be developed as townhouses, apartments, commercial development, a school or a park.

In order to reduce these complaints, the Commissioners of Planning and Engineering and Works recommended:-

That future Servicing Agreements for residential plans of subdivision involving a mixture of land uses, require the developer to erect and maintain signs on future townhouse, apartment, commercial, school, and park lands indicating the future use and the telephone number and the name of the City of Mississauga Department where additional information is available, and that such signing be carried out to the satisfaction of the City prior to the execution of the related Servicing Agreement.

A.00.02.01

See Recommendation #40 (Councillor Marland)

ADOPTED

5. Summary of Unfinished Business relating to the Public Works Committee as of August 10, 1983.

A.03.04.06

See Recommendation #41 (Councillor Marland)

RECEIVED

RECOMMENDATIONS: As per Report No. 8-83

ADJOURNMENT: 11:40 a.m.

Christine Dadds

CHRISTINE DODDS, COMMITTEE CO-ORDINATOR
0016C/68C

REPORT NO. 8-83

TO: The General Committee of the City of Mississauga.

LADIES AND GENTLEMEN:

The Public Works Committee presents its eighth report and recommends:

- 37-83 a) That a representative from the Ministry of Municipal Affairs and Housing be invited to meet with the Public Works Committee to discuss their publication entitled "Private Roads - Planning Guidelines for Municipalities", dated March, 1982;
- b) That the report of the City Solicitor, dated September 15, 1983, on the legal implications of private lane residential development proposed for Phase 1 of Lisgar District, be deferred until this meeting.

C.04.07
(38-37-83)

- 38-83 a) That a system of alternate side parking be instituted on certain roadways in the City where a need for long term on-street parking is identified;
- b) That additional parking control staff be provided for enforcement of Recommendation (a) above;
- c) That the Planning Department of the City of Mississauga review current parking requirement standards;
- d) That the Commissioner of Engineering and Works prepare a report for the consideration of the Public Works Committee on the development of an experimental program for permit parking in specific areas of the City of Mississauga taking into consideration costs, revenues, legal rights, etc.;
- e) That the areas being recommended for the experiments set out in (a) and (d) be depicted on maps of the City of Mississauga for the consideration of the Public Works Committee.

C.03.03
F.06.04.02
(38-33-83)

Amended
M. Farrow
Wm. Taylor
L. Stewart
Charles Allan

Amended
Wm. Taylor
R. Edwards
Reg. for Report
205-83

September 19, 1983

39-83

That the Commissioner of Engineering and Works prepare a report to the Public Works Committee on twice a week summer garbage pick-up (a) at the expense of and paid in advance by the ratepayers wishing the service, and (b) on a City wide basis.

F.05.04.01
(38-39-83)

*New recommendation
Wm. Taylor - Ref. Res. 206-83*

Amended

40-83

That future Servicing Agreements for residential plans of subdivision involving a mixture of land uses, require the developer to erect and maintain signs on future townhouse, apartment, commercial, school, and park lands indicating the future use and the telephone number and the name of the City of Mississauga Department where additional information is available, and that such signing be carried out to the satisfaction of the City prior to the execution of the related Servicing Agreement.

A.00.02.01
(38-40-83)

*Wm. Taylor
R. Edwards
L. Stewart
J. Heenan
K. O'Neill*

41-83

That the Summary of Unfinished Business relating to the Public Works Committee as of September 19, 1983, be received for information.

A.03.04.06
(38-41-83)



City of Mississauga

MEMORANDUM

To Christine Dodds From Linda Mailer
Dept. Clerk's Dept. Clerk's

August 18, 1983

Re: Report 7-83
Public Works Committee
August 10, 1983
File: A.03.04.06

General Committee at its meeting on August 15, 1983, considered Report No. 7-83 of the Public Works Committee meeting held on August 10, 1983, and approved the recommendations of the Committee.

The Report, as presented, was adopted by Council at its meeting on August 17, 1983.

L. Mailer

Linda Mailer
Committee Coordinator

/1

THE CORPORATION OF THE CITY OF MISSISSAUGA

A G E N D A

PUBLIC WORKS COMMITTEE

THURSDAY, OCTOBER 20, 1983 AT 9:30 A.M.

COMMITTEE ROOM A

MEMBERS: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield

PREPARED BY: Clerk's Department
DATE: October 18, 1983

COMMITTEE MEMBERS ARE REQUESTED TO CONTACT THE APPROPRIATE DEPARTMENT HEADS
PRIOR TO THE MEETING IF GREATER EXPLANATION OR DETAIL IS REQUIRED WITH REGARD
TO ANY ITEM ON THE AGENDA.

15C/68C

INDEX, PUBLIC WORKS COMMITTEE AGENDA, OCTOBER 20, 1983

<u>ITEM #</u>	<u>FILE #</u>	<u>SUBJECT</u>
1.	C.04.07	Private Lane Residential Development - Lisgar Development Concept Plan
2.	T-76042 F.02.07 C.04.12	Naming of street relative to extension of Matheson Boulevard easterly to Renforth Drive and procedure for naming streets within City of Mississauga in general
3.	A.03.04.06	Summary of Unfinished Business

CITY OF MISSISSAUGA

PUBLIC WORKS COMMITTEE

MONDAY, OCTOBER 20, 1983
COMMITTEE ROOM A AT 9:30 A.M.

A G E N D A

DEPUTATION - 9:30 a.m.

- A. Mr. G. M. Farrow, Assistant Deputy Minister, Community Planning Wing of the Ministry of Municipal Affairs and Housing, will appear before the Committee, in connection with the Ministry's publication "Private Roads - Planning Guidelines for Municipalities".

MATTERS FOR CONSIDERATION:

1. On September 19, 1983, the Public Works Committee considered a report from the City Solicitor, dated September 15, 1983, on legal implications of residential development in a subdivision where access to the privately owned residential lots is off a private road owned mutually by a group of owners who must all use the same roadway to access their properties. This report was an up-date on the investigations being conducted by the City Solicitor and the Commissioner of Engineering and Works into the concerns outlined at the Public Works Committee Meeting held on August 10, 1983, with respect to the "module type" development proposed for Phase 1 of Lisgar District.

In his report, the City Solicitor reviewed some of the legal problems and the suggested solutions brought forward at the previous Public Works Committee meeting in addition to suggestions that had emanated from meetings with the developer and his solicitors. Included in the report were extracts from a document entitled "Private Roads - Planning Guidelines for Municipalities" published in March, 1982 by the Ministry of Municipal Affairs and Housing. These extracts dealt with the financial implications of property owners pressuring their municipality to accept ownership and maintain their roads, and the legal aspect of whether or not the roads are in fact public or private.

The City Solicitor recommended:

1. Should the Committee see any merit in the private road concept, then a comprehensive study of the planning, financial and legal implications for the municipality should be undertaken.
2. In the alternative, the project should be considered under the authority of The Condominium Act.

This recommendation was however not dealt with and instead, the Public Works Committee made the following recommendation which was adopted by Council on October 11, 1983:

- a) That Mr. M. Farrow from the Ministry of Municipal Affairs and Housing be invited to meet with the Public Works Committee to discuss their publication entitled "Private Roads - Planning Guidelines for Municipalities", dated March, 1982,

October 20, 1983

- b) That the report of the City Solicitor, dated September 15, 1983, on the legal implications of private lane residential development proposed for Phase 1 of Lisgar District, be deferred until this meeting.

Mr. G. Milt Farrow, Assistant Deputy Minister, Community Planning Wing of the Ministry of Municipal Affairs and Housing, will attend the meeting.

The following are attached to this agenda for the Committee's consideration:

- (i) Publication prepared by the Ministry of Municipal Affairs and Housing entitled "Private Roads - Planning Guidelines for Municipalities, dated March, 1982.
- (ii) Report from the City Solicitor, dated September 15, 1983, on the legal implications of a private road residential development, deferred to this meeting of the Committee.
- (iii) Report on the Public Works Committee's Field Trip to London on September 19, 1983.
- (iv) Communications from Borden & Elliot, Solicitors representing First City Development Corp. Ltd., dated September 30th, on the legal issues concerning cluster housing project.
- (v) Copy of information received from the City of London, Ontario, on the private streets in their municipality.
- (vi) Cost comparison between a convention lotting scheme and a modular lotting scheme, using the three pipe system with a 2-year storm criterion for both designs, prepared by Paul Theil & Associates Ltd., consulting engineers to the First City Development Corporation's proposed modular development.
- (vii) Comparison of maintenance costs for conventional lotting scheme vs. modular lotting scheme, prepared by Paul Theil & Associates Ltd.
- (viii) Cost of Resurfacing module private road in 1983 dollars, prepared by Paul Theil & Associates Ltd.

C.04.07
DIRECTION REQUIRED

October 20, 1983

2. Report dated October 5, 1983, from the Commissioner of Engineering and Works, re-submitting his previous reports on the naming of a street relative to the extension of Matheson Boulevard easterly to Renforth drive, and in addition setting forth the procedure followed for naming streets within the City of Mississauga in general.

On May 4, 1983, General Committee considered a report relating to the naming of a street relating to the extension of Matheson Boulevard to Renforth Drive, and recommended the following:

- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the realigned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983 from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.
- (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
- (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

As a result of this recommendation, the Commissioner of Engineering and Works reported to General Committee on July 19, 1983, and recommended that the name SATELLITE proposed by York Hanover Development Ltd. for the portion of the roadway contained within their development be approved, and the remaining portions of the extension (Parts A & C on the sketches) be named SATELLITE. This report was considered by General Committee on August 15th and on August 17th, Council adopted the following recommendation:

That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration.

General Committee's concerns had been that the road to be named Satellite is an extension of Matheson Boulevard east of Dixie Road and that this might cause confusion, not only for the public, but also for emergency services. In this connection, the Commissioner now recommends that the Public Works Committee suggest a name for the extension of Matheson Boulevard.

October 20, 1983

In addition to the matter of the naming of the Matheson Boulevard extension, the Commissioner also outlines the procedures followed for naming streets in general in the Municipality.

The Commissioner recommends:

- (a) That the report from the Commissioner of Engineering and Works dated October 5, 1983, with respect to the street naming procedure in the City of Mississauga be received.
- (b) That the Public Works Committee recommend a name for the extension of Matheson Boulevard easterly to Renforth Drive after considering our reports of March 31, 1983, and July 19, 1983.

T-76042
F.02.07
C.04.12

RECOMMEND ADOPTION

- 3. Summary of Unfinished Business relating to the Public Works Committee as of October 20, 1983.

A.03.04.06
RECOMMEND RECEIPT

P. W. DATE OCT. 20 1983

PRIVATE ROADS

PLANNING GUIDELINES FOR MUNICIPALITIES



Ontario

Ministry of
Municipal Affairs
and Housing

March 1982

Hon. Claude F. Bennett, Minister
R.M. Dillon, Deputy Minister

Additional copies available from:
Ontario Government Bookstore
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Toronto, Ontario M7A 1N8
Price: \$2.00 payable in advance
to Treasurer of Ontario

1A

1.0 INTRODUCTION

Recently there has been increased interest in development with road access other than publicly owned and/or maintained roads.

There are many potential local and provincial problems where private roads provide access to development. Accordingly, the ministry discourages any development on existing and new private roads in the absence of

- . a comprehensive study of the planning, financial and legal implications for the municipality, and
- . approved official plan policies on this type of access based on that comprehensive study.

These guidelines are intended to help municipalities develop a position on private road development by identifying potential private road problems and the kind of information that should be collected and examined for the municipal study.

For the purposes of these guidelines, a private road is any road not available for use by the general public since it is privately owned and maintained. This means any road not publicly owned and/or maintained.

Contact with the ministry's Community Planning Advisory Branch and Community Planning Review Branch before the study begins is highly recommended. Early discussion with these branches will confirm the specific information needed for the study based on local circumstances. These discussions can save a municipality from unnecessary work and expense in their study by tailoring the research required to local information sources and conditions. The completed study should also be discussed with these branches to resolve any ministry concerns before planning changes are made. Funding for the review may be available through the Community Planning Advisory Branch.

Most of the information needed for the study should exist in municipal records and can be used effectively by local staff. Useful sources include existing land use maps, building permit records, assessment rolls and the knowledge of the roads superintendent and solicitor.

2.0 PRIVATE ROADS PROBLEMS

2.1 Financial

Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- . private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- . landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- . seasonal residents may desire year round access to permit them year round occupancy, and
- . residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard

1c
if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

2.2 Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal

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status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads.

2.3 Land Use Planning

Private road problems are described more easily in financial and legal terms rather than in planning terms. However, the planning framework (i.e. official plan and zoning by-law coverage) provides an established way of making a formal municipal position and complementary controls over development on private roads using public input.

Some aspects of private roads do pose land use planning problems. Private roads are largely associated with seasonal residential uses in recreational areas. Demand for municipal ownership and maintenance of these roads is low where the development serviced is, and remains, seasonal. However, conversion to permanent residential use increases demands for higher levels of services, similar to those in other parts of the community. The municipality should anticipate areas of conversion and establish appropriate policies and controls.

Without addressing the land use implications of private roads and developing a corresponding policy, the chances of successfully enforcing a municipal position and controlling the adverse effects of private roads are slim. While an official plan's land use distribution may be sound, without private roads policies the plan would be an incomplete base for municipal action. Once established, these policies can be followed up in a number of ways. Seasonal zoning is one of the planning tools used in trying to control the effects of private roads. While the legal basis for this zoning is sound, the ministry

realizes the difficulties that can be involved in effectively enforcing these by-laws. Further, official plan policies on capital works prohibiting the provision of municipal services on private roads can help municipalities deal with pressure to provide services before the consequences of this are explored. The Planning Act requirement that no public work be undertaken for any purpose not conforming to the official plan lends weight to these policies.

3.0 COMPONENTS OF THE COMPREHENSIVE STUDY

The local study is intended to help the municipality assess its private roads situation and, if necessary, develop an official plan policy to deal with it. The questions which this guideline suggests are designed to show whether any of the problems described earlier exist or could result from the use of private roads as access to development.

Based on the comprehensive study, a municipality may decide not to allow development on private roads at all. Municipalities deciding to allow such development should assess the effectiveness of the controls and determine whether changes are required.

The study should address these three private roads issues:

- . land use planning
- . financial
- . legal

The conclusions of the study should clearly

- . confirm whether there are or may be problems with private roads in the municipality or not

- . identify the nature, extent and effect of those problems
- . indicate the municipal position on private roads based on the findings of the study, and
- . identify alternate official plan policies, zoning approaches and any other relevant regulatory tools needed to implement the municipal position on private roads.

The study should contain answers to the questions set out below unless some of them are clearly not pertinent to the municipality. The study can go beyond these questions if considered useful.

3.1 Land Use Planning

- . Are there private roads in the municipality? Where are they? A map showing private and public roads separately should be prepared at a scale allowing measurement of their lengths. What determines the categorizing of a road as private on the map?
- . Choose a representative period for the study (e.g. the last five years).
- . How many seasonal dwellings, permanent dwellings and vacant lots are there on private roads? How many lots used for some other purpose exist on private roads? What percentage of private road frontage is vacant or used for something other than residential use (separate figures)? How many severances have been granted on private roads?
- . How many building permits have been issued in the municipality in the study period? Of this total, how many permits have been issued for lots with private road access? Is the rate of building on lands with private road access increasing?

- . About how many residential units on private roads have been converted from seasonal to permanent use in the study period? Are these conversions concentrated or scattered throughout the municipality?
- . Has the maintenance of any private road(s) been assumed by by-law in the study period? Does the municipality intend to assume by by-law maintenance of any private road(s) in the foreseeable future? Please indicate the approximate length and location on the map prepared. Has the municipality had any requests to assume the maintenance of private road(s) in the study period? What services, if any, does the municipality provide to private road(s) now?
- . Do the municipality's official plan and zoning by-law explicitly address private roads and conversion from seasonal to permanent residential use? If so, how?

Answers to these questions will describe the existing situation regarding private roads. They will also indicate if private road development forms a significant and growing amount of the municipality's growth. Reviewing the existing planning controls together with the trend in private road development will show whether those controls are adequate or should be changed.

3.2 Financial

- . What would be the approximate, current cost to bring each private road up to minimum Ministry of Transportation and Communications subsidy standard? How much would the associated costs of surveys, land acquisition, deed preparation and any other costs be?
- . Who would pay these costs if these roads become public and why? If the municipality is going to pay these costs, how

are they going to be recovered? (The ministry's Field Services Branch, whose offices are listed at the end of this publication, are prepared to report the impact of a specific expense on a municipality's financial position. Such reports can be made available to municipalities who request them and can outline the cost associated with a particular work).

- . What would be the anticipated municipal costs per year to maintain a kilometre of road at Ministry of Transportation and Communications subsidy standard?
- . How would the municipality pay for the maintenance costs of the larger of the following:
 - private roads for which the municipality intends to accept dedication and maintenance responsibility in the foreseeable future, or
 - private roads which legally may be found to be public and to have been assumed by the municipality as a result of the provision of municipal services.
- . If the municipality intends to provide services on private roads but not to assume those roads, how would the municipality pay for these services and would any legal problems be created?

3.3 Legal

- . Do the actions of private road owners and the municipality create any legal grounds for claims that a private road has become a public road? (In addition to answering this question, the municipal solicitor may have relevant comments on the conclusions of the review).

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3.4 The Conclusion of the Study

- . Has the study confirmed the existence or potential for any of the problems described earlier? If so, what problem or combination of problems might there be?
- . Based on the findings of the study, what should be the municipal position on private roads as a means of access to development?
- . If the official plan policies, zoning by-laws or other available regulatory means do not ensure that the municipal position can be achieved, what specific changes are required?

The last question of the study is the first step toward developing effective controls recognizing the variety of problems private road access can cause. To help you answer this question the Community Planning Advisory Branch and the Community Planning Review Branch are prepared to discuss the private roads review and possible planning controls. Early and frequent contact with these branches can ensure that the study is done with a minimum of problems and maximum benefit. Municipalities are encouraged to use this resource to assist them.

This study exercise and follow-up can result in reasonable controls over private roads, acceptable to both the municipality and the province.

The Community Planning Advisory Branch has offices at the following locations:

Central Region
2nd Floor
47 Sheppard Avenue East
Willowdale, Ontario M2N 2Z8
Telephone: (416) 224-7635
Zenith 52650



City of Mississauga

MEMORANDUM

15

To CHAIRMAN AND MEMBERS OF THE PUBLIC WORKS COMMITTEE
Dept. _____ L. W. Stewart, Q. C.
City Solicitor



15th September, 1983.

P. W. DATE SEPT. 19, 1983

P. W. DATE OCT. 20, 1983

SUBJECT:

Private Lane Residential Development
Lisgar District

ORIGIN:

Request for Report No. 163-83
Public Works Committee, August 10th, 1983

COMMENTS:

This is to be considered an interim update on the report dated August 4th, 1983, further to the Committee's direction and request for report which was issued out of its August 10th meeting.

At the Public Works Committee meeting of August 10th, 1983, "It was agreed that the Public Works Committee would sponsor an inquiry and the developer was asked to research and investigate other projects throughout Canada and the USA to determine and compare the number of units and costs; ultimate cost of homes; length of time the developments had been in existence; problems encountered by the local and regional governments, and methods used to govern and enforce the servicing and maintenance of commonly held elements within the developments."

I assume the City can then be informed of these "other projects", can secure information thereto, and then, if necessary, arrange to visit such projects. A list should be obtained from the proposed developer.

With regard to "private road development" in the United States I am informed that two elements are paramount; 1. such developments are usually exclusive and expensive, and 2. they stress privacy and security. To a certain extent these elements pertain to many private road developments in Canada but there is no necessity for such

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requirements in Mississauga. What is necessary is that a private lane project "work" in the way that the Lorne Park Estates has functioned. A private lane project must not become a burden and a problem to the eventual residents, and to the City in terms of the City being required to spend time and money on private problems.

Mr. Rumm mentioned at the meeting of August 10th, 1983, that he did not want to "go condo" because it is not well accepted in Canada, although he did admit it is well accepted in Europe. He said the idea of private roads is not experimental and he referred to Lorne Park Estates. I could certainly recommend a "Lorne Park" type of development, 79 homes in a 77 acre private development, on 66 foot private roads, (one road is 80 feet wide reducing to 55 feet, I believe) that has been developed since 1879. A legal Corporation collects fees and makes decisions regarding roads, services, common expenses, repairs, maintenance and other necessary common interests. Lorne Park Estate is therefore very similar to a condominium operation and it seems that the individual owners have found it necessary to have a Corporation to carry on the necessary work and make the necessary decisions. Lorne Park Estates is therefore an example of the necessity for a condominium development for a private lane concept as proposed by Mr. Rumm.

At the August 10th Public Works Committee meeting much was said about positive and negative covenants and English Courts decisions. Such English decisions have not been accepted by Canadian courts. Positive covenants do not run with the land and therefore responsibilities to do certain works cannot be passed on to successive owners. (In fact, resales might be difficult, except at bargain prices, if a narrow private lane concept with special covenants was developed). Lawyers for prospective buyers could be concerned as legal requisitions with regard to certain covenants may be declared "not to go to the root of title", and therefore a "structure" of positive covenants would not be enforceable. We have had some experience wherein prospective buyers and mortgage lenders are less interested with houses built on private roads. One can imagine that aspect and other problems of legal liability as a source of expensive litigation (for contribution to common expenses, accidents, lane blockages, flooding, etc.).

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It has also been said that if a private lane concept of development was to be allowed it should be applied to all of Mississauga. In other words if it has merit a similar number of units should be allocated to each and every ward in the City on an experimental basis, after a comprehensive study was made, and after a special zoning category was devised.

Two matters of consequence have occurred since the August 10th Committee meeting.

MEETING WITH DEVELOPER'S SOLICITOR

Firstly, another meeting was held with the developer's solicitor at which further suggestions were made on behalf of the developer to meet the concerns expressed by City staff. The developer has proposed offering to purchasers a three year guarantee on the surface of the laneway (the City would, as part of its normal servicing policy, require a three year above-ground services maintenance guarantee in any event). As well, the developer proposes to reserve a right-of-way over the lane for a period of ten years. This interest would apparently be used to help form committees of owners to deal with road maintenance issues, with a developer's representative joining as a seventh member to assist in resolving potential conflicts. The developer would secure acknowledgments from the purchasers that the lane is private and not a municipal responsibility. Each owner would be required to maintain liability insurance including the lane. Finally, the creation of a rentcharge is proposed to deal with the collection of contributions for repair and maintenance of the lane. Rentcharges originated in England but have largely fallen into disuse in the modern era. The concept involved a perpetual payment to the lord of the manor and operated as a form of lien on the land. These latest proposals seem to be similar to some aspects of condominium ownership.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

In March of 1982, the Ministry of Municipal Affairs and Housing published a document entitled "Private Roads - Planning Guidelines for Municipalities". This document has come to our attention. The following statements are found at the outset of the paper. "There are many potential local and provincial problems where private roads provide access to development.

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Accordingly, the ministry discourages any development on existing and new private roads in the absence of: - a comprehensive study of the planning, financial and legal implications for the municipality, and - approved official plan policies on this type of access based on that comprehensive study".

The most salient aspect of the paper for Mississauga is articulated under the heading of Private Road Problems - Financial. It is extracted herein in total.

FINANCIAL

"Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- seasonal residents may desire year round access to permit them year round occupancy, and
- residents may perceive the municipality as a provider of the services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as a public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

The paper refers to legal issues as follows:

LEGAL

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provisions of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads."

The Provincial position paper underlines the fact that the public highway is the medium by which the usual municipal services, for which the landowner pays taxes and elects council representatives, are made available. Specific reference is made to

police protection, snow plowing, school busing and garbage collection. Furthermore, it is quite clear that an absolutely full and comprehensive study must be undertaken with respect to the long term effects of such development prior to establishing any policy on private roads for the municipality.

RECOMMENDATION:

1. Should the Committee see any merit in the private road concept, then a comprehensive study of the planning, financial and legal implications for the municipality should be undertaken.
2. In the alternative, the project should be considered under the authority of the Condominium Act.



L. W. Stewart, Q. C.,
City Solicitor.

GSS/LWS/jalf
cc: E. Halliday
0386L/4L

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PUBLIC WORKS FIELD TRIP

Re: Private Road Development to London - September 19, 1983

In Attendance:

Councillor David Culham
Councillor Margart Marland
Councillor Frank McKechnie
Councillor Rudy Skjarum

Public Works Citizen Member: David Strutt

Staff Members: Bill Taylor
Angus McDonald
Bob Barker
Len Stewart
Ron Miller
Art Guenther



Also in attendance - Woodland Co-op Student Neil Burrows

We departed from City Hall Mississauga at 2:00 p.m. and arrived in London at 4:00 p.m. London Staff members, Ben Cozens, Darcy Dutton, Ken Perry, Jerry Tikalsky and Gary Bell briefed our delegation on the London experience. London staff made it clear that they were not in favour of private road developments and that it was Council's decision that put such developments in London. While nine locations appeared in the reference map, several had not been built.

The basis of the staff concern was that demands could come from the homeowners in the future for a City takeover of the services and the roads. They were not clear on what City services were allowed at each site. While no request had been received to date, the concern, they thought, would be similar to the publicity given the unrest over condominium servicing in the Toronto area. It was their impression that condominiums had been built to lower construction standards to that of City facilities and that takeover would be costly and very disruptive. London staff had not had any such requests from their condominiums in London. It was a real concern to the London staff that road standards were below that of the City of London and that the road curvatures would not allow municipal trucks and ploughs to navigate the roads. Ben Cozens, Jerry Tikalsky and Gary Bell came with us on the tour.

Windsor Avenue, (see map)

Windsor Avenue had eight homes, seven of which developed on a private road after the first home had been built. The lots were considerably smaller than proposed in the Lisgar experiment with two of the homes being semi-detached. The cul-de-sac was much deeper than the Mississauga proposal as well. On our visit to Windsor Avenue, we interviewed Mrs. G. Kinzie of Unit 5, 231 Windsor Avenue and Brad Pope of Unit 19. It was their impression that no resident had a difficulty with garbage arrangements. The one elderly person who had a potential problem had the garbage taken out by Mr. Pope. They saw no problem

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with winter snow removal, a particular heavy task in London, as this was adequately handled by a private contractor. All grass, front and back, was cut by the same contractor as the snow removal. The garbage and the grass cutting were paid for on a \$16 per month per household, basis. Mrs. Kinzie said there was no problem with the resale of the homes as there was some pressure to get into such a development. All of the homeowners were very happy with the small, neighbourly atmosphere created by the private road.

Mr. Pope admitted that there was a potential problem of road maintenance in the future, as the road would be in need of repair but he did not see this as an actual problem. An existing tear in the road surface in his view could be easily patched in the same way as anyone would patch their driveway. While they had thought of a "reserve" account for the road, it was not a pressing need in their view at this time.

Item 9 - Broughdale Path (see attachment)

Broughdale was an eight lot development of 35 foot frontage lots.

Ms. Beth Davidson of Broughdale was interviewed. She indicated that they had purchased the vacant lot beside them to add extra lawn to their own property. One additional vacant lot had not been built upon. Six lots then had homes. Because of the turning radius, municipal garbage collectors picked up their garbage at no extra cost. Snow plough removal was handled by the residents themselves. Because the developer did not put trees on the north side of the entrance route, residents were taking their own money and planting additional trees. Ms. Davidson had no concern for resale value and found the living environment excellent. She was not concerned, nor were other residents, with the arrangements for services as these were handled very easily. Her husband indicated there could be a future problem in the reconstruction of the road. As you can see from the map, the cul-de-sac is extremely long representing almost 2 to 2 1/2 times the length of the cul-de-sacs proposed in the Lisgar experiment. Mr. Davidson could see the value in having a reserve account established for the eventual reconstruction of the road. It did not, however, appear to be a pressing problem to him at this time. While this is a private road, a public sidewalk was placed along the road to connect to an adjacent cul-de-sac. On the adjacent cul-de-sac, which was a public road, the unattractive turning radius was some two times larger than the asphalted space in this development on Broughdale Path. Broughdale Path was very attractive providing a private and intimate neighbourhood setting.

Epworth Avenue

Epworth Avenue is in the north part of London three or four kilometers from the University. The interior roads and individual driveways were paved in lockstone. The homes were built on a zero lot line basis with a private wall and an interior courtyard. The homes were considerably above the average market for single family homes in London. The lots were on average 60 x 60 feet, so that they are much smaller than considered in the Lisgar experiment. Mrs. Forsyth and another lady were interviewed by the Committee members. They saw no problem with resale. There was no problem with parties, in particular teenage parties, as the complex could absorb a considerable amount of parking. The problem of noise was dealt with on a more personal, street basis. They did indicate that overflow parking could be handled by the adjacent college. Garbage was removed to the street by a teenager in the complex hired by the residents. The garbage removal presented no problem and

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in fact was the source of employment for teenage children. Snow removal was done through a private contractor with no difficulty. They had been concerned with over taxation and, by way of the Assessment Review Court, had reduced their taxes. Their common maintenance and other services came to \$50 per month per unit. The project was of very high design quality and presented a very attractive lifestyle.

Item 4 - North side of Windermere Road

The central street entrance was a public road. Private roads looped off the central road projecting outwards and then parallel to the Windermere Road. While the curvature of the private roads presented difficulty, fire services could easily be accessed by way of two fire hydrants and by access over the wall. The lots were very large but were laid out in a manner similar to a typical subdivision. The private roads, however, facilitated a higher quality of surface treatment that was not allowed by the City standard. No one was interviewed.

Item 2 - Hunt Club Drive

As seen on the sketch map, Hunt Club Drive had frontages varying from 48 to 60 feet with average depth of about 115. The zero lot concept was also used. The private road was made of lockstone as were the private driveways and much of the courtyard treatment. This led to tremendous design improvements over a paved public road and then different treatment on private driveways. Residents interviewed were extremely happy and pleased with their home. Services were dealt with again by way of agreements. It was noted that catchbasins were established internal to the private road. Garbage trucks came on site and removed the garbage. All surfaces were provided similar to a condominium without the legal arrangements involved in a condominium corporation.

Item 7 - Old Oak Lane

Old Oak Lane was a large exclusive residential area, Old Oak Lane, in the southwest near Byron. This area did not relate to the type of situation proposed in Lisgar.

In concluding it was noted that no staff member had ever visited the sites with a view to interviewing responses of the residents. The three staff members that came along with the Public Works Committee were somewhat surprised at the very positive responses of the residents involved. Our own City staff indicated that the situation with separate private streets dispersed throughout the City was not synonymous with the situation with many streets in one similar area. All committee members responded that the major concerns of garbage collection, snow removal, fire safety, resale value, etc. were handled most adequately by the irregular and small lot private road developments. Mr. Larry Taylor indicated that while all the private arrangements appeared to have handled any potential problem, it was still his view that they could be better handled with a condominium corporate established to deal with the private road parcel. It would have to be noted that the objections of having a short private street from a planning point of view had been realized in all of the developments. The only potential concern was for the long term maintenance and reconstruction of the common road. None of the projects were more than eight years old and this problem had not as yet arisen.

David J. Culham

CITY OF LONDON

PRIVATE STREET DEVELOPMENT LOCATIONS

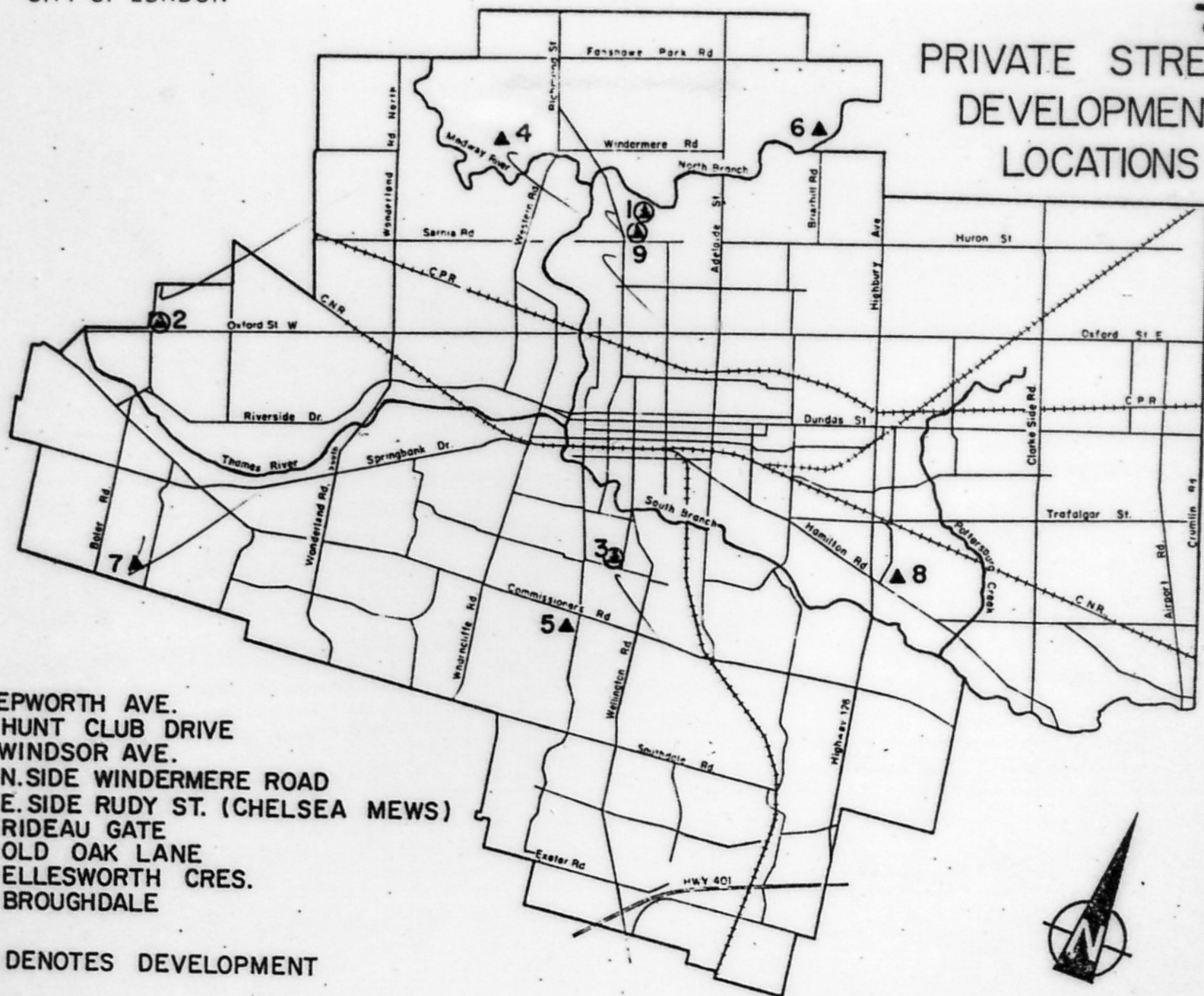


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PATENT AND TRADE MARK COUNSEL
G. JAMES M. SHEARN

PLEASE REFER TO: Morton G. Gross

September 30th, 1983.

DELIVERED

First City Development Corp. Ltd.,
99 Avenue Road,
Toronto, Ontario.

Attention: Somer Rumm, Esq.
Vice-President, Land

Dear Sir:

Re: First City Cluster Housing Project -
The City of Mississauga

We wish to report to you our progress on the legal issues concerning the cluster housing project.

From the point of view of establishing the legal basis for the suggestions we have made, we are extremely pleased with the results of the additional research we have done. There is ample case law to support the proposition that when a person assumes the benefits obtained in a grant, that person is obligated to assume the burdens, notwithstanding that those burdens may involve a positive covenant. As mentioned to you previously, this principle is firmly established in the case of *Tito vs. Waddell*, decided in 1977. This case was decided by Mr. Justice Megarry, author of the classic book on "The Law of Real Property". Mr. Justice Megarry is considered by most legal scholars to be the greatest authority on real property in the United Kingdom and Canada. In addition, case law dealing with the obligation to assume a burden if a person has taken the benefits, even if such burden is a positive covenant is included in Laskin's Book entitled "Cases and Notes on Land Law". As you know the author of that book, Mr. Justice Laskin, is

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Mr. S. Rumm

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September 30th, 1983.

now Chief Justice of the Supreme Court of Canada.

In addition to the above, we are of the opinion that the concept of a "rentcharge" also assists in this matter. In essence, a rentcharge (unlike rent under a lease) is a charge which a person can create in their land in favour of another party for an amount of money each year. A rentcharge binds successors in title. Thus, each of the 6 property holders could grant a rentcharge to the other property holders thereby solidifying the obligation to pay monies for road maintenance. Our research indicates that a rentcharge remains a viable property interest at common law in the Province of Ontario.

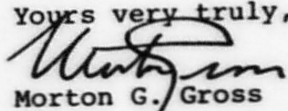
Finally, as discussed with you previously, the obligations to maintain the road could be placed in the subdivision agreement and its registration on title would bind successors in title by virtue of the provisions of the Planning Act, 1983.

We are encouraged in our views set out above by virtue of the fact that these views have been confirmed by a professor of law at Osgoode Hall Law School.

Thus, we are pleased with the progress which we have made in ratifying our earlier opinions to you.

To date we have been unable to persuade Mr. Stewart and his department of the legal propositions which we have proposed. We shall endeavour to continue in our efforts and supply such further information as he may request.

If you have any questions or comments concerning the above, kindly contact us.

Yours very truly,

Morton G. Gross

MGG/al

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PLEASE REFER TO: S.N. Iczkovitz

September 26, 1983

First City Development Corp.
99 Avenue Road
Toronto, Ontario

Attention: David Strachan

Dear David,

Re: Modular Lotting - Lisgar

As we have discussed, we are presently revising the "sample description/conditions" which would be utilized to implement a private laneway as an integral part of the modular lotting proposal. The revisions are being undertaken in part to respond to concerns expressed by representatives of the Mississauga legal department as well as to incorporate certain suggestions which we have received from yourself and Mr. Rumm. We can expect that as discussions continue the final documentation may well receive further refinement and modification, as will be discussed later in this letter.

We are presently proceeding on the basis of the following factors which are settled:

1. Each module will contain 6 lots of individually owned freehold for private residences, and one block representing a private laneway serving the 6 residences. The private laneway would open onto an adjacent public road. Where private lots abut the public road, 1' reserves would be established so that effectively access will be available only by utilization of the private laneway.
2. Each lot owner would receive in addition to the fee simple title to his lot an undivided 1/6th interest in the Block representing the laneway.

3. Each lot would have the benefit of a right of way over the laneway for ingress and egress in common with the other 5 lots within the module.

At the outset of our investigations into this proposal we assumed that the "legal structure" should be "self-supporting" in the sense that we would not rely on subdivision agreements being entered into with the Municipality that governed the private laneway, nor rely on any special zoning by-laws or property standards by-laws which might be passed by the Municipality. On the other hand however, it is noted that these are available mechanisms for addressing concerns which have been raised relating to the proposal, and therefore their ultimate resolution may affect the documentation which we utilize. For example, to the extent that the Subdivision Agreement contains provisions governing the use and operation of the laneway, deed restrictions may be modified. Inasmuch as the Legal Department of the Municipality seems to be negative to any arrangement which might "imply" involvement by the Municipality in this private matter, we have proceeded in accordance with the assumption to which we referred at the outset of this paragraph. Additionally we are incorporating an acknowledgement by the lot owners in their title documents that they accept private responsibility for the laneway.

Our objective has always been to maintain as uncomplicated as possible a mechanism for implementing the modular lotting proposal. We recognized the simplicity of the proposal and that in practical terms we had only to address the basis upon which 6 private homeowners who shared a common private driveway would deal with the limited questions of maintenance and repair of the laneway. Leaving aside political or sociological considerations, we noted at the outset that it was legally possible to impose no restriction or covenants, but merely create a mutual right of way. Notwithstanding that virtually every shared or mutual driveway in the Metropolitan area is dealt with in precisely this manner, this proposition was not considered appropriate to a development of this scale. As a result we then considered the basis upon which covenants could be imposed which would create enforceable obligations on the 6 lot owners to contribute to maintenance and repairs.

In recognition of conventional attitudes, e.g. "that positive covenants will not run with the land" it was necessary to explore the circumstances where such a generalization is incorrect (leaving aside the obvious exception of covenants included in a subdivision agreement). We concluded that each 6 lot module would make up a building scheme, with a community of interest, clearly stipulated restrictions benefitting each lot, and that the obligation imposed would be enforceable based on the established doctrine of benefit and burden. The simplest approach in this regard is simply to ensure that each lot must utilize the private laneway, i.e. take the benefit and therefore bear the corresponding burden of for example contributing to 1/6th the cost of repairs and maintenance of the private laneway. These covenants would be incorporated into the Transfers of title as well as annexed to title as restrictions. The restrictions would prohibit any lands from being utilized for access other than the laneway, and make the right of way conditional upon compliance with the restriction, including payment of a 1/6th contribution of repair and maintenance expense. Additionally, the building scheme would have established a very basic format for administering the contributions among the 6 lot owners.

We have available procedurally, as well as including covenants in the Transfers of title, and annexing them to title under Section 118 of the Land Titles Act, the ability to impose restrictions on transferring title under Section 117. Subject to approval by the Land Registrar, one could impose requirements related to acceptance of the covenants as a condition of Transfer.

Although it was, and remains our opinion that the "legal aspects" of implementing a modular lotting proposal could be satisfied in the manner referred to above, we were unable to persuade the Legal Department of the Municipality that this was the case. While one might suggest that political and perhaps practical considerations were taken into account, there remained as well an expressed concern about accepting the efficacy of the outlined proposal in view of the absence of experience which would support our position. As the legal concern centred on the aspect of positive covenants running with the land (to which we were suggested to "go condominium") we re-examined the legal principles with a view to adding further support to our proposal. As a result we are modifying the proposed restrictions in the following manner:

- (a) stipulating that the benefit of utilizing the right of way is dependent upon compliance with the restrictions, in further support of the benefit and burden principles.
- (b) creating rent charges which would charge the land with a payment and would be supportive of the covenants imposed.
- (c) having the developer remain available for a limited period (say 10 years) to assist in regulation of the laneways amongst the 6 lot modules.

With specific reference to point (a) above we have attached hereto a copy of the case of *Tito v. Waddell*, which contains a detailed, comprehensive review of the law of benefit and burden.

With reference to point (b) above we have attached hereto extracts from English treatises dealing with this subject. There is very little Canadian jurisprudence or commentary on the subject of rent charges, but we are satisfied that as a matter of common law the rent charge is valid in Canada. In simple terms a rent charge is a right created by an instrument to receive monies which is charged on and payable exclusively out of land. In England rent charges have been utilized in connection with building schemes, as positive covenants imposed to support the rent charge and maintain the security will run with the land as does the rent charge. It is interesting to note that when in 1977 most form of rent charges were abolished in England (though not in Canada) the "estate rent charge" was maintained, as a rent charge created for the purpose "of making covenants to be performed by the owner of the land affected by the rent charge enforceable by the rent owner against the owner for the time being of the land".

Although English precedents are available, the form to be utilized for implementing a rent charge in Canada, and registering it under the Land Titles Act would undoubtedly have to be worked out. Ideally it would be designed to simply charge each of the 6 lot owners with the rent charge the benefit of which would in each case accrue to the other 5 lot owners.

Although we have investigated a number of "roughly analogous" developments we have not discovered any particular approach which is consistently applied. I would suspect that in most cases the covenants or agreements which create or impose the respective benefits and burden or obligations have been simply entered into and registered on title without the exhaustive research we have undertaken.

Although we have not reviewed draft documents with Registry Office representatives, we have had discussions with a variety of persons who have been most

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Borden & Elliot

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co-operative in providing us with their experiences in these areas; from the Legal and Survey Standards Branch R. Priddle, B. McGrath and D. Godfrey, solicitor, as well as A. Cordery, the Registrar in Brampton. The essence of our discussions with these gentlemen was to establish the ultimate registerability of the proposed covenants as opposed to their legal consequence.

Additionally, we continue our discussions regarding the nature of restrictions on transferring title to be imposed under Section 117 of the Land Titles Act. For example a lot owner would not be permitted to transfer his lot without transferring simultaneously the undivided 1/6th interest in the laneway (and vice versa) nor without including the right of way and corresponding provisions. On the other hand, if the Registry Office permitted, additional requirements could be imposed requiring prospective transferees to enter into prescribed forms of agreements whereby they assume the covenants and obligations registered.

Therefore, the enclosed draft covenants are basically a pro-forma of the type of covenants to be included in transfers and recorded on title, but do not represent the totality of the possibilities which can be employed.

Yours very truly,

A handwritten signature in dark ink, appearing to be 'R. J. Borden', written in a cursive style.

SNI/rph

1. DRAFT LEGAL DESCRIPTION

(ASSUMES THAT THERE WILL BE A CLUSTER CONSISTING OF 7 BLOCKS (1-6 FOR THE "LOTS", 7 FOR THE LANEWAY) SO THAT EACH UNIT'S DESCRIPTION WOULD START WITH 1 BLOCK TOGETHER WITH AN UNDIVIDED 1/6th INTEREST IN BLOCK 7).

ALL and SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Mississauga, in the Regional Municipality of Peel, and being composed of the whole of Block 1, Registered Plan 43M-Ø, and an undivided 1/6th interest in Block 7, on said Plan 43M-Ø.

TOGETHER with a right-of-way for pedestrian and vehicular passage over, along and upon said Block 7 Plan 43M-Ø, in common with all others entitled thereto (and which right-of-way is conditional upon compliance with the restrictive covenants hereinafter set forth);

SUBJECT to a right-of-way for pedestrian and vehicular passage over, along and upon said Block 7, Plan 43M-Ø, in favour of the owners and occupants from time to time of Blocks 2-6, Plan 43M-Ø;

AND SUBJECT to the restrictive covenants and building scheme recorded as Instrument No.ØØ

And to the intent that the benefit of the following covenant shall be, and form part of the description of the said lands, and Blocks 2-6, and 7, on Plan 43M-Ø, and that the burden thereof shall run with and be binding upon the said lands, the transferee, its successors and assigns:

- (a) shall not build, nor permit, any structures of any kind or fence to be built upon any part of Block 7, Plan 43M-Ø, nor in any way interfere with the common right-of-way affecting such Block;

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- (b) shall not use, not permit to be used any part of Block 1, Plan 43M-§ for means of vehicular passage or access to or from the said lands;
- (c) shall not use any lands for pedestrian or vehicular passage or access to or from the said Block 1, Plan 43M-§ other than the common right-of-way hereinbefore described over Block 7 Plan 43M-§.
- (d) shall contribute a one-sixth (1/6th) share (in common with the owners from time to time of Blocks 2-6 respectively on said Plan 43M-§) on account of the maintenance and repair of the common right-of-way hereinbefore described over said Block 7, Plan 43M-§.
- (e) shall not transfer or charge the whole or any parcel, unless:
 - (i) such transfer or charge is with respect to the whole of Block 1 and the undivided 1/6th interest in Block 7, on Plan 43M-§; and
 - (ii) such transfer or charge contains reference to the common right-of-way over Block 7 on Plan 43M-§, and contains all of the covenants herein set forth and refers to the building scheme and restrictions in Instrument No. §§.

3.

2. DRAFT BUILDING SCHEME-RESTRICTIVE COVENANT
(TO BE ANNEXED TO TITLE OF EACH OF BLOCKS 1-6)

For the purpose of promoting a building scheme for the common and mutual benefit of the owners from time to time of the lands described as Blocks 1 to 6 on Plan 43M-§;

And for the purpose of imposing a common burden on such owners corresponding thereto;

And to the intent that the benefit and burden of the following restrictions and covenants shall form part of, be annexed to, and run with the lands hereinbefore described, and enure to the benefit of, and be binding upon the owners from time to time of the said lands, their successors and assigns forever:

1. No person shall erect or maintain, nor permit to be erected or maintained any structure of any kind or fence upon any part of Block 7 on Plan 43M-§, nor in any way interfere with the common right-of-way affecting such Blocks;
2. No person shall use, nor permit to be used any part of Blocks 1-6, Plan 43M-§ for means of vehicular passage or access to or from any of the said Blocks 1-6;
3. No person shall use, nor permit to be used any lands for pedestrian or vehicular passage or access to or from any of the said Blocks 1-6, Plan 43M-§ other than the common right-of-way which exists over Block 7, Plan 43M-§;

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4. No person shall undertake any manner of repairs, maintenance, construction, re-construction or renovation of all or any part of the common right-of-way which exist over Block 7, Plan 43M-Ø other than where there has been a concurrence in such undertaking by the owners of not less than four (4) of the lands described respectively as Blocks 1-6 on Plan 43M-Ø; (Note 1)
5. Each owner from time to time of the lands described respectively as Blocks 1 to 6 on Plan 43M-Ø shall contribute a one-sixth (1/6th) share (in common with the remaining owners from time to time) on account of maintenance and repair of the common right-of-way over said Block 7, on Plan 43M-Ø, and in this regard, decisions made by concurrence in any such undertaking by the owners of not less than four (4) of the aforementioned six (6) parcels shall govern, and be binding upon the owners of each of the said six (6) parcels;
6. No owner shall use the common right-of-way, nor permit it to be used by invitees, licensees agents or contractors unless he maintains public liability insurance in an amount designated from time to time by a majority of the owners of Blocks 1-6, and has available, on request, a certificate confirming such coverage;
7. Each owner acknowledges that the repair and maintenance of the common right-of-way over Block 7, is the private and sole responsibility of the owners from time to time of Block 7, and that the Corporation of the City of Mississauga therefore has no obligations in respect thereto.

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Notes:

1. Original grantor (developer) may reserve right-of-way over laneway for limited period (e.g. 10 years) and participate as a voting, but non contributing participant in owners votes with respect to road maintenance and repair.
2. Original grantor may be separate instrument (or incorporated into restrictions) assume responsibility for repairs of laneway during a stipulated limited warranty period.
3. Original grantor will receive a rent charge charged against the respective owners and in support of performance of covenants; rent charge will be assigned to each successive owner from time to time.

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registration of	LAND CHARGES; LAND
	REGISTRATION
under will, statement of	EXECUTION
payment of	EXECUTION
valuation	EXECUTION
charging orders made by local authorities	HOUSING; PUBLIC HEALTH
charitable annuities	CHARITIES

civil list pension	CONSTITUTIONAL LAW
compensation rentcharges	CORPORATION
compulsory acquisition of land subject to rentcharge	COMPULSORY ACQUISITION
Crown annuities	CHARGES ON ACTIONS
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distress, generally	DISTRESS
executors	EXECUTION
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1. NATURE OF RENTCHARGES AND ANNUITIES

(1) IN GENERAL

1201. Distinction between rentcharge and annuity. The right created by an instrument (whether a deed, will, codicil or statute) to receive a definite annual sum of money is an interest which may be either a "rentcharge" or an "annuity". If the annual sum is charged on and payable exclusively out of land¹, the interest is a rentcharge². Important changes have been made to the law of rentcharges by the Rentcharges Act 1977, which (save for limited exceptions) prohibits the creation of new rentcharges after 22nd August 1977, and provides for the extinguishment of existing rentcharges in the course of time³. However, if there is no charge or the annual sum is charged on personal property or a mixed fund, then the interest is an annuity⁴. A rentcharge charged on freehold land, or on another perpetual rentcharge, is real property⁵, but, if charged on leasehold land, although properly called a rentcharge, it is a chattel real in the nature of personal property⁶. An annuity is personal property⁷. A basic distinction between a rentcharge and an annuity is that a rentcharge is

recoverable by distress⁸ whereas, in the absence of express provision⁹, an annuity is not so recoverable¹⁰. The difference between real and personal property is of importance in connection with the administration of the estates of deceased persons¹¹ and especially in relation to capital transfer tax¹².

- ¹ For the meaning of "land", see generally REAL PROPERTY, para. 377, ante.
- ² *Savery v Dyer* (1752) Amb 139; *Weston v Bower* (1742) 9 Mod Rep 309; *Buttery v Robinson* (1826) 3 Bing 392; *Ramsey v Thornegate* (1829) 16 Sim 575, where the gift was to A, her executors, administrators and assigns; *Patching v Barrett* (1881) 51 LJ Ch 74, CA; *Re Waring, Greer v Haring* [1896] 1 IR 427.
- ³ See the Rentcharges Act 1977, s. 2, 3, 18 (2). This Act implements, with some modifications, the recommendations made by the Law Commission in their Report on Rentcharges (Law Com. no. 68), and is based upon the draft Bill appended to that report. The main provisions of the Rentcharges Act 1977 are those which prohibit the creation of ordinary rentcharges (see s. 2, and para. 1224, post), provide for the compulsory extinguishment of existing rentcharges (see s. 3, and para. 1344, post), and provide for the redemption and apportionment of rentcharges in the place of existing procedures (see s. 4-10, and paras. 1293 et seq., 1350 et seq., post). It follows that (save for the prohibition provisions) the law relating to rentcharges in this note will apply mainly to rentcharges in existence before the creation of rentcharges was prohibited by the Rentcharges Act 1977, and then only until those rentcharges are in due course extinguished, and to the limited classes of rentcharge which are destined to survive.
- ⁴ The Rentcharges Act 1977 applies in relation to any land in which there subsists a Crown interest as it applies in relation to land in which no such interest subsists: s. 14 (1). "Crown interest" means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall or to a government department, or which is held in trust for Her Majesty for the purposes of a government department: s. 14 (2).
- ⁵ *Savery v Dyer* (1752) Amb 139; *Aubin v Daly* (1820) 1 B & Ald 50; *Rothson v Jervis* (1841) 3 Beav 450, 60 LTT 202, 2 Bl Com (14th Edn) 40. As to the creation of annuities, see paras. 1239 et seq., post. As to personal property, see PERSONAL PROPERTY, vol. 35, paras. 1101 et seq.
- ⁶ See e.g. *Savery v Dyer* (1752) Amb 139 at 140; and see para. 1208, post.
- ⁷ *Re Fraser, Lougher v Fraser* [1904] 1 Ch 726, CA. See also *St Aubyn's Case* (1900) 69 Ch 183; *Saffery v Elwood* (1834) 1 Ad & El 191; *Wiltshire v Robbins* (1844) 14 Sim 76; *Alston v Haynes* (1892) 29 LR Ir 416; and see para. 1231, post. As to chattels real, see generally REAL PROPERTY, paras. 301, 303, ante.
- ⁸ See para. 1213, post.
- ⁹ See paras. 1203, 1319, 1320, post.
- ¹⁰ As to the recovery of an annuity charged by an order under the Housing Act 1957, s. 14, 15, see para. 1258, note 2, post, and HOUSING, vol. 22, paras. 582, 583.
- ¹¹ As to the recovery of annuities, see generally paras. 1335 et seq., post.
- ¹² See para. 1281 et seq., post.

1202. Rentcharges and annuities in the administration of estates. The question whether annual payments are in the nature of a rentcharge or an annuity may be important, where the payments arise under a will, in determining the fund out of which they are payable¹, or, where the payments were payable to a deceased person and continue payable to his estate after his death, in determining whether the right to the payments passes under a general or residuary charge or bequest in that person's will².

- ¹ See para. 1281, post.
- ² See e.g. *Re Fraser, Lougher v Fraser* [1904] 1 Ch 726, CA. The question whether the payments constitute a rentcharge or annuity is no longer of importance in determining the persons beneficially entitled after the death of the deceased where the deceased dies intestate, as the old rules of descent have in general been abolished in the case of death after 1925, and the same rules of intestate succession apply to all property as to which a deceased person dies intestate: see EXECUTION, vol. 17, para. 1369 et seq.

(2) NATURE OF A RENTCHARGE

1203. Meaning of "rentcharge". A rentcharge is an annual sum issuing out of land, but not as an incident of tenure¹, the due payment of which is secured by a right of distress². It is called a rentcharge because the land in respect of which it is paid is charged with a distress³. Where there was no power of distress the rent was called a rent seck⁴.

In some cases the power to distress for a rentcharge could arise at common law, apart from any express reservation⁵. In 1731 the like remedy by distress and sale as in the case of rent reserved upon lease was extended to rents seck⁶, and rents and annuities charged on land were in effect converted into rentcharges⁷. A person entitled under an instrument which came into operation after 1881 to receive an annual sum out of any land or out of the income of any land, whether charged by way of rentcharge or otherwise, not being rent incident to a reversion, now has a statutory power of distress and certain other statutory remedies⁸.

- ¹ See para. 1205, post.
- ² Co Litt 143b, 144a, 218a, 218b; Tudor, LC Real Prop (9th Edn) 41; Gilbert on Rents etc. 2 Bl Com (14th Edn) 42; 18 Vin Abr 475, Rent (D); Com Dig, Rent (D) 16; *Weston v Bower* (1742) 9 Mod Rep 309; *West v Robinson* (1838) 3 CBNS 422 at 438.
- ³ Co Litt 143b; *Weston v Bower* (1742) 9 Mod Rep 309 at 310; *Re Lord Gerard and Bercham's Contract* [1894] 3 Ch 295 at 308, 311, CA.
- ⁴ Littleton's Tenures, s. 218; *Weston v Bower* (1742) 9 Mod Rep 309 at 310; and see DENTON, vol. 13, para. 205.
- ⁵ See Co Litt 147a, where it is said that if a man seised of land in fee binds his goods and land to the payment of a yearly rent, this is a good rentcharge with power to distress, albeit there be no express words of charge, not to distress, *Rodham v Berry* (1826) 1 LJQB 202 (rentcharge created by will); *Mompenny v Mompenny* (1864) 9 IR 514 at 517, 518. The power arises where a rent was granted (1) to a widow in lieu of dower, (2) for equality of exchange, or (3) by one coparcener to another for equality of partition. Gilbert on Rents 19, 20.
- ⁶ Landlord and Tenant Act 1730, s. 1. Fealty was an inseparable incident to a reversion. Co Litt 143a. The right of distress was inseparably incident to fealty. Gilbert on Rents, s. 197. Hence every rent incident to a reversion carries the right of distress. See further DENTON, vol. 13, para. 202; LAMINGTON AND STUART, vol. 27, para. 252.
- ⁷ See *Buttery v Robinson* (1826) 3 Bing 392 (annuity charged on freehold land by will); *Saffery v Leaver* (1869) LR 9 Eq 23 at 24, 25 (annuity charged on freehold land by will); *Killey v Kelcy* (1872) LR 17 Eq 495 (annuity charged on leasehold by will); *Roper v Roper* (1876) 1 Ch D 714 at 720; *Re Lord Gerard and Bercham's Contract* [1894] 3 Ch 295 at 311, CA (rent reserved on a conveyance, where it was said that it was the right of distress which made the rent a rentcharge). See also *Fairfax v Gray* (1779) 2 Wm Bl 1126 (annuity); *Saunders v Astley* (1825) 2 Bing 519; *Dodd v Thompson* (1864) LR 1 CP 131 at 137 (charge by deed).
- ⁸ Law of Property Act 1925, s. 121, re-enacting and somewhat extending the Conveyancing Act 1881, s. 44 (repealed): see paras. 1313 et seq., post.

1204. Rentcharges at law and in equity. Since 1925 a rentcharge at law can only subsist as an estate in fee simple or as a term of years absolute and must be in possession, issuing out of or charged on land, being either perpetual or for a term of years absolute¹. A rentcharge (not being a rentcharge limited to take effect in remainder after or expectant on the failure or determination of some other interest) is a rentcharge in possession for this purpose, notwithstanding that the payments in respect of it are limited to commence or accrue at some time subsequent to its creation². All other interests in a rentcharge, if validly created, take effect as equitable interests³. Examples of such equitable

interests are a life interest such as a jointure, an entailed interest¹ and an undivided share of the proceeds of sale of a rentcharge held on the statutory trusts².

The distinction between legal and equitable interests becomes important when it is necessary to enforce payment because it is only the legal owner of a rentcharge who can do this directly, for example by distress, entry or limitation of a term³.

- ¹ Law of Property Act 1925, s. 1 (1), (2) (b). See also *REAL PROPERTY*, para. 346, *supra*.
- ² Law of Property (Entailed Interests) Act 1932, s. 2.
- ³ See the Law of Property Act 1925, s. 1 (3), and *EQUITY*, vol. 16, para. 1330.
- ⁴ See *ibid.*, s. 130, and *REAL PROPERTY*, para. 422, *supra*; *SETTLEMENTS*.
- ⁵ See para. 1210, *post*.
- ⁶ See para. 1313 *et seq.*, *post*.

1205. Distinction between rentcharge and rent service. Rent¹ is either rent service² or rentcharge³. In either case it is a periodical payment made in respect of land, but the two forms of rent are fundamentally different. Rent service is incident to a reversion; it is a payment made by the tenant to the landlord as a recompense for the use of the land⁴, and the receipt of it constitutes the landlord's chief beneficial right from ownership of the reversion.

On the other hand a rentcharge is not an incident of tenure and the owner has no reversion⁵; thus a rentcharge is a burden on the ownership of the land, and, if the land is let, is in effect discharged out of the rent service which the owner receives.

- ¹ As to rent reserved on a lease, see *LANDLORD AND TENANT*, vol. 27, para. 1193 *et seq.* As to distress for rent, see *INTERESTS*, vol. 13, para. 205 *et seq.* As to the limitation of actions for the recovery of land or rent, see *LIMITATION OF ACTIONS*, vol. 28, para. 705 *et seq.*
- ² As to services incident to feudal tenure and the gradual development of rent service, see *REAL PROPERTY*, para. 304 *et seq.*, 384-386, *supra*.
- ³ According to Littleton there were three forms of rent, that is to say rent service, rentcharge and rent seek: Littleton's Tenures, s. 313. Rent seek was formerly a rent without power of distress, but, as a power of distress is now incident to every rent charged on land, every such rent is in effect a rentcharge: see para. 1203, *ante*.
- ⁴ *Edale v Stephenson* (1822) 1 Sim & St 122 at 124.

1206. Fee farm rent and other obsolete rents. Fee farm rent is rent reserved upon a grant in fee¹. It is included in the definition of "rentcharge" in the Law of Property Act 1925², and is for practical purposes indistinguishable. Chief rent and quit rent were manorial incidents, which have been extinguished by statute³. In certain parts of England it was a common practice to sell building land in consideration of a perpetual rentcharge⁴. These rentcharges were sometimes incorrectly called chief rents.

- ¹ See Co Litt 141b; 2 Bl Com (14th Edn) 41; and the notes to *Bradbury v Wright* (1781) 3 Doug KB 624 at 627n, where it is said that the rent must be at least one-fourth of the value of the land at the time of the reservation.
- ² Law of Property Act 1925, s. 205 (1) (xxiii). See also the Administration of Estates Act 1925, s. 55 (1) (xxv).
- ³ See the Law of Property Act 1922, ss. 128 (2) *provisio* (repealed), 138 (repealed), and *COPYHOLDS*, vol. 9, para. 782.

- ⁴ This practice has generally ceased by reason of the prohibition (with limited exceptions) of the creation of new rentcharges as from the 22nd August 1977 by the Rentcharges Act 1977, s. 2: see para. 1224, 1230, *post*.

1207. Tithe rentcharge. A rentcharge in the ordinary sense is to be distinguished from tithe rentcharge which was a right to receive part of the produce of land commuted for an annual sum, while a rentcharge is charged on the land itself¹. Tithe rentcharge, however, was extinguished² (with an exception of little practical importance) and replaced by redemption annuities charged in respect of land and payable to the Crown for sixty years, the tithe owner being compensated with redemption stock³; and those tithe redemption annuities, charged under the Tithe Acts 1936 and 1951⁴, were extinguished as from 2nd October 1977⁵.

- ¹ *Bailey v Ballham* (1885) 30 Ch D 84 at 89.
- ² See *ECCELESIASTICAL LAW*, vol. 14, para. 1213.
- ³ See *ECCELESIASTICAL LAW*, vol. 14, para. 1215 *et seq.*
- ⁴ Finance Act 1977, s. 56.

1208. Incorporeal nature of rentcharge. A rentcharge in fee simple is an incorporeal hereditament¹ and is real property². A rentcharge for a term of years is a chattel real and, although incorporeal, cannot properly be described as a hereditament as it is personal property³. Where a rentcharge was charged on both freeholds and leaseholds, it has been considered as issuing out of the freeholds but nevertheless with a right to distrain on the leaseholds⁴.

A rentcharge is normally a sum certain but may be a fluctuating sum⁵.

- ¹ Co Litt 49c; 2 Bl Com (14th Edn) 20; *Re Brewer* (1875) 1 Ch D 409 at 410, CA; and see *REAL PROPERTY*, para. 382, *supra*. It has been considered that the treatment in English law of a rentcharge as an incorporeal hereditament is arbitrary: Pollock's Principles of Contract (19th Edn) 189, *supra*.
- ² *Savery v Dyer* (1752) Amb 139. A rentcharge has been said to be an interest in the land itself (*Creed v Creed* (1844) 11 Cl & Fin 491 at 508, HL) and to be a portion of the estate (*Pon v Land Durr* (1876) 3 Ch D 295 at 299). The owner of a rentcharge has, however, no estate in the property out of which it issues: *Re Buck, Edwards v Bush* [1920] 1 Ch 488 at 491, per Lawrence J. A rentcharge in fee was subject to curtesy (Co Litt 29a) and dower (Co Litt 32a; see *Chaplin v Chaplin* (1734) 3 P Wms 229). As to the abolition of tenancy by the curtesy and dower, see *REAL PROPERTY*, para. 474, 481, *supra*. Formerly on the death of the owner intestate a rentcharge ordinarily descended to the common law heir, but when granted out of gavelkind land it descended in gavelkind: *Edm v Thomas* (1687) 1 Vern 489; and see *Stokes v Vesper* (1674) 1 Mod Rep 112; *Randall v Wittle* (1672) 2 Lev 87. As to the abolition of the old rule of descent, see *EXECUTORS*, vol. 17, para. 1370. A rentcharge granted for equality of partition descended in the same manner as the land: Co Litt 169b.
- ³ See para. 1201, *ante*, and para. 1231, *post*.
- ⁴ *Bur's Case* (1600) 7 Co Rep 23; *Richardson v Nixon* (1845) 2 Jo & Lat 250; *Drew v Barry* (1874) 8 IR Eq 260 at 279 (Ir. CA). See also Co Litt 147a.
- ⁵ Rentcharges used as a conveyancing device to improve the enforceability of positive covenants in development schemes are sometimes fluctuating: see Report on Rentcharges (Law Com. no. 68), para. 49 (2).

1209. Rentcharge issuing out of another rentcharge. At common law, a rentcharge cannot be created by a subject so as to issue out of a rent¹ or other

incorporeal hereditament.¹ However, by virtue of its prerogative, the Crown can create a rentcharge issuing out of an incorporeal hereditament², and a subject may do the same under statutory powers³. By statute a rentcharge or other annual sum (not being rent incident to a reversion), payable half yearly or otherwise, may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in the like manner as it could have been made to issue out of land⁴. The powers of the Crown and those of the subject are now, however, severely restricted in this respect by the prohibition of the creation of new rentcharges (with limited exceptions) as from 22nd August 1977 by the Rentcharges Act 1977⁵.

¹ *Earl of Stafford v Buckley* (1750) 2 Ves Sen 170 at 178.
² *Gardiner v Williamson* (1831) 2 B & Ad 316 at 319; *Re Abns Corn Charity, Charity Comrs v Bode* [1901] 2 Ch 750 at 759; *Co Litt* 472; *Gilbert on Rents* 21.
³ *Co Litt* 472; *Gilbert on Rents* 22; *A-G v Corymby Corp* (1715) 1 P Wms 306; and see CONSTITUTIONAL LAW, vol. 8, para. 1080.
⁴ *Re Lord Gerard and Bercham's Contract* [1901] 1 Ch 295 at 315, CA, where a rent reserved under statutory powers out of an easement was held to have been properly described in the contract for sale as a rentcharge. Cf. *Re Buxton's Trusts, Melling v Addison* (1910) 103 LT 427 (affd. [1911] 104 LT 710, CA), and see para. 1211, post.
⁵ Law of Property Act 1925, s. 122 (1). Without prejudice to any order of court made before 1926, s. 122 operates to confirm any annual sum which would have been validly created if the section had been in force: s. 122 (4). See further para. 1316, post. Such rentcharges are, however, extremely rare: see Report on Rentcharges (Law Com. no. 68), para. 11, note 8.
⁶ See the Rentcharges Act 1977, s. 2, and para. 1224, post.

1210. Undivided shares. A rentcharge, being land within the meaning of the Law of Property Act 1925¹, cannot be held at law in undivided shares². Where, before 1926, a rentcharge was held at law or in equity in undivided shares vested in possession or where, after 1926, a rentcharge is conveyed or devised to two or more persons in undivided shares, it is vested in trustees upon the statutory trusts for sale or otherwise³. A beneficiary as such cannot disclaim⁴.

¹ See the Law of Property Act 1925, s. 205 (1) (ix), (xxiii), and para. 1211, post.
² *Ibid.*, s. 1 (6); see REAL PROPERTY, para. 362, ante.
³ *Ibid.*, s. 14, 39 (4), Sch. 1, Part IV; Law of Property (Amendment) Act 1926, s. 7, Schedule; see REAL PROPERTY, para. 362 et seq., ante.
⁴ *Schala v Joseph Nadler Ltd* [1911] 2 KB 79. Before 1926 a rentcharge might be divided and the land rendered liable to several distresses: *Rivers v Watson* (1839) 5 M & W 255; and see *Hobley v Roberts* (1825) 1 M & W 107; *And v Watson* (1898) Cro Eliz 637 at 641; *Warner v Rogers* (1759) Amb 559; *Harrison v Bawby* (1793) 5 Term Rep 246. See further para. 1320, post.

1211. Application of certain Acts to rentcharges. Unless the context otherwise requires, a rent or other incorporeal hereditament and a right or benefit over or derived from land are included within the meaning of "land" for the purposes of the Law of Property Act 1925¹ and its associated Acts². For the purposes of certain of those Acts "rent" is expressly defined as including a rentcharge³. "Land" includes rentcharges, and the meaning of "rentcharge" is defined, in the legislation relating to the limitation of actions⁴. For the purpose of the statutory provisions concerning the execution of disentailing assurances⁵,

the meaning of "lands" extends to rents and hereditaments of any tenure, whether corporeal or incorporeal⁶. In the enactments which provide for the apportionment of rent and other annual payments⁷, "rent" includes rentcharge and rent seek⁸.

A rentcharge is land for the purpose of the power of the courts to enforce judgments or orders by imposing charges on property of judgment debtors⁹ and to appoint receivers by way of equitable execution¹⁰.

¹ See the Law of Property Act 1925, s. 205 (1) (ix), and REAL PROPERTY, para. 378, ante. See also the Rentcharges Act 1977, s. 11 (1), which provides that in that Act "land" has the same meaning as in the Law of Property Act 1925, s. 205 (1).
² See e.g. the Settled Land Act 1925, s. 117 (1) (ix), and s. 117 (1) (ix); Similar definitions apply for the purposes of the Land Registration Act 1925, s. 1 (1) (ix) (see LAND REGISTRATION, vol. 26, para. 977, note 2); the Land Charges Act 1972, s. 17 (1) (ix) (see LAND CHARGES, vol. 26, para. 707, note 4); the Administration of Estates Act 1925, s. 55 (1) (xxiii) (see EXECUTION, vol. 17, para. 1020, note 4); and the Trustee Act 1925, s. 68 (6) (see TRUSTS).
³ See the Law of Property Act 1925, s. 205 (1) (xxiii), which definition is in the same terms as that in the Land Registration Act 1925, s. 1 (ix) (see LAND REGISTRATION, vol. 26, para. 980, note 7); Administration of Estates Act 1925, s. 55 (1) (xxiii) (see EXECUTION, vol. 17, para. 1053, note 1).
⁴ See the Limitation Act 1980, s. 38 (1), and LIMITATION OF ACTIONS, vol. 25, para. 709, 711. As to the extinguishment of rentcharges by lapse of time, see para. 1319, post.
⁵ I.e. the Fines and Recoveries Act 1833. This Act remains in force only as regards dealings with entailed interests as equitable interests: see the Law of Property (Amendment) Act 1924, s. 9, Sch. 9. As to disentailing assurances, see generally REAL PROPERTY, para. 437 et seq., ante.
⁶ Fines and Recoveries Act 1833, s. 1.
⁷ See the Apportionment Act 1870, and para. 1288, post.
⁸ *Ibid.*, s. 5, and see EXECUTION, vol. 17, para. 1081, note 1.
⁹ See the Interpretation Act 1978, s. 5, 22 (1), Sch. 1; Charging Orders Act 1971, s. 1, 2. A rentcharge was formerly liable to be taken in execution under a writ of *debt*: see the Judgments Act 1838, s. 11 (repealed), which referred to the rents of the debtor; and see also *Hutton v Shute* (1669) Cro Eliz 742. As to the abolition of the writ of *debt*, see EXECUTION, vol. 17, para. 547, note 1.
¹⁰ See EXECUTION, vol. 17, para. 574 et seq.

(3) NATURE OF AN ANNUITY

1212. Meaning of "annuity". An annuity is a certain sum of money payable yearly either as the grantor's personal obligation or out of property not consisting exclusively of land; it differs from a rentcharge in that a rentcharge issues out of land¹.

¹ 2 Bl Com (14th Edn) 40; *Co Litt* 144b; *Savery v Dyrr* (1762) Amb 139 at 140; *Bignold v Cole* (1859) 4 Drew 343 at 346. For the meaning of "annuities on human life" in the Insurance Companies Act 1974, see s. 85 (1), and INSURANCE, vol. 25, para. 7, note 2.

1213. Nature of annuity. An annuity is itself personal estate¹. Thus, annuities were held to be in the nature of personal estate when granted by the Crown out of Barbados duties², or out of the revenues of the Post Office³, or out of coal duties⁴. Similarly, where, under statutory powers, limited owners granted easements and charges to a company, subject to the payment of an annual rent or sum to the grantors, their executors, administrators and assigns, the interest

The principal incorporeal hereditaments of any importance today are rentcharges, easements and profits; and in addition, something must be said of advowsons and tithes. These will now be examined.

Part I

RENTCHARGES

Sect. 1. Nature of Rentcharges

1. Rentcharges and rent services. Periodical payments in respect of land fall under the two main heads of rentcharges and rent services. Where the relationship of lord and tenant exists between the parties, any rent payable by virtue of that relationship by the tenant to the lord is a rent service.⁴⁴ If there is no relationship of lord and tenant, the rent is a rentcharge. Thus if L grants a lease to T at £100 per annum and X charges his fee simple estate with the payment of £200 per annum to Y, L has a rent service and Y a rentcharge. Since the Statute *Quia Emptores*, 1290, it has been impossible for a grantor to reserve any services on a conveyance of freehold land in fee simple, for the grantee holds of the grantor's lord, and not of the grantor.⁴⁵ Consequently no rent reserved on a conveyance of freehold land in fee simple after 1290 can be a rent service. Although at law services could be reserved on the grant by a fee simple owner of a life estate or a fee tail,⁴⁶ it was most unusual to do so.

The only rent service met with in practice is thus the rent reserved upon the grant of a lease for a term of years. A rent reserved by a lease is annexed to a reversion in land, while a rentcharge stands on its own as an incorporeal hereditament. The majority of rent services reserved on the grant of a fee simple in freehold land before *Quia Emptores*, 1290, have remained uncollected for so long (the fall in the value of money having made them not worth collecting) that they have been both forgotten and barred by lapse of time.⁴⁷ Such rents were usually known as chief rents or

⁴⁴ *Ante*, p. 689.

⁴⁵ *Ante*, p. 30.

⁴⁶ It should be remembered that if any rent service is reserved on the grant of an estate for life, the estate is now automatically converted into a term of 90 years: *ante*, p. 642.

⁴⁷ *Owen v. de Beauvoir* (1847) 16 M. & W. 547. Uncollected freehold rent services were barred after twenty years under the Real Property Limitation Act, 1833, s. 2; but quære whether they are within the Limitation Act, 1939; *post*, p. 1018.

quit rents in the case of freehold land. Any still existing at the end of 1925 were likely to be manorial (for only then was the preservation of an ancient title probable) and these were classed with those manorial incidents in copyhold land which were extinguished at the end of 1935 at the latest.⁴⁸

2. Rents seck. At common law the relationship of lord and tenant carried with it an automatic right of distress for any rent.⁴⁹ If no such relationship existed, there was no common law right of distress, and consequently an express clause of distress was frequently inserted when reserving the rent. A rent supported by no right of distress was known as a rent seck,⁵⁰ and the name rentcharge was reserved for a rent supported by a power of distress given by the instrument creating the rent or by statute. Rents seck ceased to exist many years ago, for by the Landlord and Tenant Act, 1730,⁵¹ the owners of rents seck were given the same rights of distress as a landlord has against his tenant under a lease; that is to say, the landlord might impound such chattels as were to be found on the land charged with the rent.⁵² Since even this was a far from perfect remedy, a right of entry might also be inserted in the original grant, which would enable the payee to take possession of the land to enforce payment of arrears.⁵³ This in turn was rendered unnecessary by the Conveyancing Act, 1881, the provisions of which (as now re-enacted) are explained below.⁵⁴

3. Legal and equitable rentcharges. A rentcharge is real property, so that both at law and in equity it could be held for any of the usual estates or interests, such as an estate tail⁵⁵ or a term of years.⁵⁶ But now, since 1925, an interest in a rentcharge can be legal only if it is—

(a) in possession,⁵⁷ and

(b) either perpetual or for a term of years absolute.⁵⁸

Further, a legal rentcharge cannot be created at law without certain

⁴⁸ *Ante*, p. 36.

⁴⁹ *Ante*, p. 691.

⁵⁰ Lit. 218 (Latin *siccus*—dry, barren).

⁵¹ s. 3; cf. *Re Lord Gerard and Bechem's Contract* [1894] 3 Ch. 295.

⁵² For distress, see *ante*, p. 691.

⁵³ For an example, see *ante*, p. 138. Such a right of entry was incident to the rentcharge and transferable with the right to receive it.

⁵⁴ *Post*, p. 797.

⁵⁵ *Ante*, p. 787, n. 2; *Chaplin v. Chaplin* (1733) 3 P.Wms. 229.

⁵⁶ *Re Fraser* [1904] 1 Ch. 726.

⁵⁷ As to when a rentcharge is deemed to be in possession, see *ante*, pp. 141, 142.

⁵⁸ L.P.A., 1925, s. 1 (2) (b); *ante*, p. 141.

formalities.⁵⁵ A mere contract for a rentcharge may however create an equitable interest in the usual way.⁵⁶

4. Rentcharge on a rentcharge. At common law a rentcharge could be charged only upon a corporeal hereditament. There could be no rentcharge charged upon another rentcharge⁵⁷ or other incorporeal hereditament,⁵⁸ since obviously there could then be no right of distress. But this technical obstacle was removed both for the past and for the future by the Law of Property Act, 1925,⁵⁹ which validates rentcharges charged on other rentcharges and provides special machinery for enforcing payment.

Sect. 2. Creation and Transfer of Rentcharges

1. Creation. A rentcharge may be created by statute, by an instrument *inter vivos*, or by will.

(a) *By statute.* A rentcharge may be created by statute, or by virtue of powers conferred thereby.⁶⁰

(b) *By instrument inter vivos.* Apart from statute, a legal rentcharge can be created *inter vivos* only by a deed,⁶¹ although it has always been possible for a person disposing of land to reserve a rentcharge to himself, without the grantee of the land executing the deed.⁶²

An equitable rentcharge may be created merely by contract⁶³ or by signed writing.⁶⁴

(c) *By will.* A will now operates only in equity⁶⁵; therefore, if a rentcharge is created or devised by will, the beneficiary gets no legal interest until the personal representatives have assented to the gift. The assent must be in writing, but need not be by deed.⁶⁶

⁵⁵ See *infra*.

⁵⁶ *Jackson v. Lever* (1792) 3 Bro.C.C. 605; cf. *ante*, p. 624.

⁵⁷ Co.Lit. 47a; *Earl of Stafford v. Buckley* (1750) 2 Ves.Sen. 170 at 178.

⁵⁸ *Re The Alms Corn Charity* [1901] 2 Ch. 750 at 759.

⁵⁹ s. 122; *post*, p. 798.

⁶⁰ See, e.g., Improvement of Land Acts, 1864 and 1899, which empowered a landowner (e.g., a tenant for life) to obtain an order from the Ministry of Agriculture, Fisheries and Food charging the land with repayment of money borrowed to finance improvements. These Acts were in general superseded by the Settled Land Acts, 1882 and 1925 (*ante*, p. 282), but the Act of 1864 is still occasionally resorted to because (by s. 39) it may give the rentcharge priority over other incumbrances.

⁶¹ *Howell v. Shippam* (1826) 5 B. & C. 221 at 229. The usual exceptions apply: see L.P.A., 1925, s. 52.

⁶² Co.Lit. 143a.

⁶³ *Ante*, p. 60.

⁶⁴ L.P.A., 1925, s. 53, replacing Statute of Frauds, 1677, ss. 3, 7.

⁶⁵ L.P.(Am.)A., 1924, Sched. IX; *ante*, p. 535.

⁶⁶ A.E.A., 1925, s. 36; *ante*, p. 537.

2. Words of limitation

(a) *Transfer.* The words of limitation required for the transfer of an existing rentcharge are governed by the ordinary rules for dispositions of land,⁶⁷ so that a will made after 1837 or a deed executed since 1925 will pass the whole interest in the rentcharge unless a contrary intention is shown.⁶⁸

(b) *Creation.* On the creation of a new rentcharge the Wills Act, 1837, s. 28, has been held not to apply; it is confined to the transfer of an existing interest.⁶⁹ Accordingly the devisee of a rentcharge created by the will can take it only for life unless a contrary intention appears.⁷⁰

It is not so clear whether the Law of Property Act, 1925, s. 60,⁷¹ applies to the creation of rentcharges by deed. Its general form is very like that of the Wills Act, 1837, s. 28; but it applies to every "conveyance of freehold land" executed since 1925, and "conveyance" includes a "mortgage, charge, lease" (all of which create interests *de novo*, although these are not new hereditaments) and "every other assurance of property or of an interest therein by any instrument except a will."⁷² It would be a narrow construction of this definition to hold that a deed creating a rentcharge was not an "assurance of property or of an interest therein," and it is perhaps the more likely prospect that a perpetual rentcharge will now be held to need no special words of limitation when created by deed. If this is wrong, the pre-1926 rules will apply and only a life interest will result unless proper words of limitation are used.⁷³

Sect. 3. Means of Enforcing Payment of Rentcharges

A. Rentcharge Charged on Land

There are four remedies available to the owner of a rentcharge if it is not paid. The first remedy, namely, an action for the money, is given by the common law; the other three are given by statute,⁷⁴ thus making unnecessary the express powers of corresponding effect

⁶⁷ *Ante*, pp. 50 *et seq.*

⁶⁸ Wills Act, 1837, s. 28; L.P.A., 1925, s. 60 (1).

⁶⁹ *Nichols v. Hawkes* (1853) 10 Hare 342.

⁷⁰ *Ante*, p. 56.

⁷¹ *Ante*, p. 56; cf. *post*, p. 828, n. 66.

⁷² L.P.A., 1925, s. 205 (1) (b).

⁷³ The decision in *Grant v. Edmondson* [1930] 2 Ch. 245; [1931] 1 Ch. 1 seems to be founded not on any rule peculiar to rentcharges but on the rule that words of limitation might be incorporated by reference to another instrument: *ante*, p. 53; cf. (1931) 47 L.Q.R. 340 (W. Strachan).

⁷⁴ L.P.A., 1925, s. 121, replacing C.A., 1881, s. 44, and C.A., 1911, s. 6.

which were often inserted in deeds creating rentcharges. These statutory remedies avail only in so far as they might have been conferred by express stipulation,²² so that they do not extend the law. They also yield to any contrary intention expressed in the instrument creating the rentcharge.²³

1. Action for the money. A personal action for the rent (as for a debt) will lie against the "terre tenant" (the freehold tenant for the time being of the land upon which the rent is charged), even if the rent was not created by him²⁴ and even if it exceeds the value of the land.²⁵ If the land charged has been divided, the terre tenant of any part is liable for the full amount.²⁶ A mere lessee for a term of years is not liable,²⁷ for the action is the modern successor of one of the ancient real actions,²⁸ which lay only against the person seised of the land, i.e., the freeholder in possession. Its "real" nature is attested by the fact that though nominally a personal action it lies against assignees of the land. In truth, "the land is the debtor,"²⁹ and the action asserts title to an incorporeal hereditament.

Although the right to sue and the liability to be sued run with the rentcharge and the land, respectively, the benefit of an express covenant for payment does not run with the rentcharge without express assignment.³⁰ Thus if a rentcharge created by A in favour of X is conveyed to Y and the land to B, Y cannot sue A on his covenant for payment if B fails to pay: A is liable to Y only while A is entitled in possession, unless Y is an express assignee of X's rights under the covenant to pay. This is another illustration of the medieval view of a rent as a thing rather than a promise.

2. Distress. If an express power of distress is given by the instrument creating the rentcharge, the extent of the right is a question of construction. If there is no such express power, and the rentcharge was created before 1882, the rentcharge owner can distrain upon the land as soon as the rent or any part of it is in

²² L.P.A., 1925, s. 121 (1).

²³ *Ibid.*, s. 121 (3), (7).

²⁴ *Thomas v. Sylvestre* (1873) L.R. 8 Q.B. 368.

²⁵ *Perrins v. Townsend* [1896] 2 Q.B. 129.

²⁶ *Christie v. Barker* (1884) 33 L.J.Q.B. 537.

²⁷ *Re Herbage Rents* [1896] 2 Ch. 811. A mortgagee is therefore not liable since 1925, for he holds a mere term of years; previously he was liable if he took a freehold estate: *Candlish v. Fitzsimmons* [1911] 1 K.B. 513.

²⁸ *Post*, p. 1167.

²⁹ *Thomas v. Sylvestre*, *supra*, at p. 372, per Quain J.

³⁰ *Grant v. Edmondson* [1931] 1 Ch. 1, where the rentcharge was created before 1926; for rentcharges created after 1925, see *Halbury*, 2nd ed., Vol. 28, p. 242. For criticism of *Grant v. Edmondson*, see (1931) 47 L.Q.R. 380 (W. Strachan). Cf. Law Commission Working Paper No. 49, para. 109.

arrear.³¹ If the rentcharge was created after 1881,³² then, subject to any contrary intention,³³ the rentcharge owner can distrain as soon as the rent or any part of it is twenty-one days in arrear.³⁴

3. Entry into possession. If a rentcharge was created after 1881³⁵ and shows no contrary intention,³⁶ the rentcharge owner may, when the rent or any part of it is forty days in arrear, enter and take possession of the land without impeachment of waste and take the income until he has paid himself all rent due with costs.³⁷

4. Demise to a trustee. If the rentcharge was created after 1881³⁸ and shows no contrary intention,³⁹ the rentcharge owner may, if the rent or any part of it is forty days in arrear, demise the land to a trustee for a term of years, with or without impeachment of waste, on trust to raise the money due, with all costs and expenses, by creating a mortgage, receiving the income or any other reasonable means.⁴⁰ If a rentcharge owner has only an equitable interest, he can grant only an equitable lease to the trustees,⁴¹ but the estate owner can be compelled to clothe the equitable lease with the legal estate.⁴²

These last three remedies are expressly excepted from the law relating to perpetuities, together with like powers conferred by any instrument for enforcing payment of a rentcharge.⁴³ This provision is perhaps not wide enough to cover a clause which is sometimes inserted entitling the rentcharge owner to effect a permanent forfeiture of the land if the rent is unpaid for a specified period, properly called a right of re-entry as opposed to a right of entry.⁴⁴ The general rule that such a power is void unless confined to the perpetuity period⁴⁵ probably applies in such a case.⁴⁶ However, if the rentcharge was created after July 15, 1964, the rule against perpetuities does not apply to any powers or remedies for recovery or enforcing payment, whether statutory or otherwise.⁴⁷

³¹ L. & T.A., 1730, s. 5.

³² L.P.A., 1925, s. 121 (7).

³³ *Ibid.*, s. 121 (3).

³⁴ *Ibid.*, s. 121 (7).

³⁵ *Ibid.*, s. 121 (1).

³⁶ *Ibid.*, s. 121 (3).

³⁷ *Ibid.*, s. 121 (5).

³⁸ *Ibid.*

³⁹ L.P.A., 1925, ss. 3 (1), 8 (2); S.L.A., 1925, s. 16.

⁴⁰ L.P.A., 1925, s. 121 (6) (amended by Perpetuities and Accumulations Act 1964, s. 11 (2)), replacing C.A., 1911, s. 6 (1).

⁴¹ *Ante*, p. 138.

⁴² *Ante*, p. 247, discussing *Re Hollis' Hospital Trustees & Hague's Contract* [1899] 2 Ch. 540.

⁴³ The combined effect of L.P.A., 1925, ss. 4 (1), 121 (6), 162, 190 (8), is not at all plain: see Law Reform Committee's Fourth Report, 1956, Cmnd. 18, paras. 42, 43.

⁴⁴ Perpetuities and Accumulations Act 1964, ss. 11 (1), 15 (3).

³¹ *Ibid.*, s. 121 (2).

³² *Ibid.*, s. 121 (3).

³³ *Ibid.*, s. 121 (7).

³⁴ *Ibid.*, s. 121 (1).

³⁵ *Ibid.*, s. 121 (3).

³⁶ *Ibid.*, s. 121 (5).

B. Rentcharge Charged on Another Rentcharge

Instead of the statutory remedies of distress, entry into possession, and demise to a trustee, the owner of a rentcharge charged upon another rentcharge may appoint a receiver if the rent or any part of it is twenty-one days in arrear.⁶ The receiver has all the powers of a receiver appointed by a mortgagee.⁷ Thus if Blackacre is charged with a rent of £100 per annum and that rentcharge is charged with a rent of £25 per annum in favour of X, a receiver of the £100 can be appointed by X if the £25 is unpaid for twenty-one days.

There is no provision for any personal action against an assignee of the rentcharge upon which the second rentcharge is charged; but since the latter can be created "in like manner as the same could have been made to issue out of land"⁸ it may be that the right to such a rentcharge is implicitly accompanied by the usual common law remedy.⁹

Sect. 4. Extinction of Rentcharges

A rentcharge may be extinguished by release, merger, lapse of time or statutory discharge.¹⁰

1. Release. The owner of a rentcharge may by deed release the land from the rent, either wholly or in part. A partial release may take the form of releasing all of the land from part of the rent,¹¹ or releasing part of the land from the whole of the rent.¹² An informal release may be valid in equity.

A limited owner, e.g., a life tenant, of a rentcharge cannot release more than his own interest, except under the powers conferred by the Settled Land Act, 1925.¹³ Nor can the owner of a rentcharge charged upon several different properties increase the liability on one of them by releasing another, unless the owner of the property to be burdened concurs in the release.¹⁴ Thus if a rent of £100 is charged on five plots of land owned by five different persons, and one plot is released, the rentcharge owner can recover £100 in respect of the four remaining plots if the owners concurred in the release,¹⁵ but only £80 if they did not concur.¹⁶

⁶ L.P.A., 1925, s. 122.

⁷ *Ibid.*; and see post, p. 920, for such a receiver's powers.

⁸ L.P.A., 1925, s. 122 (1).

⁹ Proposals for extinguishment after a fixed period are made in Law Commission Working Paper No. 49, paras. 60, 67.

¹⁰ L.P.A., 1925, s. 70, replacing L.P.(Am.)A., 1859, s. 10. Under the old law the result was to release the whole of the land: Co.Litt. 147b.

¹¹ *Ibid.*, p. 313.

¹² L.P.A., 1925, s. 70, replacing L.P.(Am.)A., 1859, s. 10.

¹³ *Price v. John* [1905] 1 Ch. 774. ¹⁴ *Booth v. Smith* (1884) 14 Q.B.D. 318.

2. Merger. At common law, if a rentcharge became vested in the same person as the land upon which it was charged, the rentcharge became extinguished by merger, even if this was not the intention.¹⁷ For this to occur, both the rent and the land must have been vested in the same person at the same time and in the same right.¹⁸ This automatic rule of the common law no longer applies, for by the Law of Property Act, 1925,¹⁹ there is to be no merger at law except in cases where there would have been a merger in equity, and the equitable rule is that merger depends upon the intention of the parties.²⁰ Even if an intention that there should be no merger cannot be shown, there will be a presumption against merger if it is to the interest of the person concerned to prevent it.²¹

3. Lapse of time. If a rentcharge is not paid for twelve years and no sufficient acknowledgment of the owner's title is made, it is extinguished.²²

4. Statutory discharge. By the Law of Property Act, 1925,²³ provision is made for landowners to obtain the discharge of their land from rentcharges on paying to the rentcharge owner a sum representing the capital value as certified by the appropriate Secretary of State.

Sect. 5. Note on the Types of Rent

A summary of the various kinds of rent may be useful.²⁴

1. Rent service: this is rent due from a tenant to his lord by reason of tenure. It is now met with only in the case of rent due under a lease or tenancy.

2. Rentcharge: this is a periodical sum charged on land independently of any relationship of lord and tenant, supported by a power of distress.

3. Rent seek: this was a rentcharge with no power of distress. It is now obsolete.

¹⁷ *Capital and Counties Bank Ltd. v. Rhodes* [1903] 1 Ch. 631 at 652, 653.

¹⁸ *Re Radcliffe* [1892] 1 Ch. 227 at 231.

¹⁹ s. 185, replacing L.A., 1871, s. 25 (4).

²⁰ *Jogle v. Vaughan Jenkins* [1900] 2 Ch. 368.

²¹ *Re Fletcher* [1917] 1 Ch. 339; but see *Re Atkinson* [1913] 2 Ch. 619.

²² Limitation Act, 1939, s. 18 (1); *Shaw v. Crompton* [1910] 2 K.B. 370; post, p. 1018.

²³ s. 191, extending C.A., 1881, s. 45. Provision is made for payment into court in case of difficulty, e.g., if the owner of the rentcharge cannot be found, or cannot prove his title to it.

²⁴ For a summary of these and many other types of rent, related to economics and the like, see (1974) 232 E.G. 349.

4. Chief rent: this was a rent service reserved on the subinfeudation of freehold land in fee simple. The Statute *Quia Emptores*, 1290, for the most part prevented such rents being created.²² Those previously created mostly fell into abeyance long ago, but some survived in manors where there were freehold tenants. Any manorial chief rents existing in 1925 were extinguished by the end of 1935.²³ In some parts of the country, e.g., Manchester, rentcharges are sometimes called chief rents.

5. Fee farm rent: this was the name originally used for chief rents; latterly it has been applied to rentcharges reserved on a conveyance in fee simple.²⁴

6. Quit rent: this was a rent service payable by a copyholder to his lord, whereby he went quit of his obligation to perform agricultural services; and chief rents were sometimes called quit rents. Quit rents existing in 1925 were extinguished by the end of 1935.²⁵

7. Rents of assize: this term is rarely encountered today; it was applied both to chief rents and quit rents.

Part 2

ADVOWSONS

An advowson (from the Latin *advocatio*) is the perpetual right of presentation to an ecclesiastical living.²⁶ The owner of an advowson is known as the patron. When a living becomes vacant, as when a rector or vicar dies or retires, the patron of the living has a right to nominate the clergyman who shall next hold the living. Subject to a right of veto on certain specified grounds, the bishop is bound to institute (formally appoint) any duly qualified person presented. This is a relic of the days when it was common for the lord of a manor to build and endow a church and in return have the right of patronage.

²² *Ante*, p. 792.

²³ *Ante*, p. 793.

²⁴ *Ante*, p. 138; cf. *Cru.Dig.* iii, 274; *Co.Litt.* 143b, n. 5 by Hargrave, disapproving a note to *Bradbury v. Wright* (1781) 2 Doug.K.B. 624 at 627a, which suggests that the rent must be at least one-quarter of the value of the land, and contending that only rent service can be a fee farm rent. *Sed quare*.

²⁵ *Ante*, p. 793.

²⁶ *Co.Litt.* 176.

It is one of the curiosities of English law that an advowson is real property. There is no physical land of which the patron is owner, but the advowson is an incorporeal hereditament and the patron has an estate in what in law is real property. His estate in an advowson will accordingly pass under a devise of "all my real property."

Under the old law of inheritance advowsons could be subject to dower or curtesy on an intestacy.²⁷ What happens to them under the new law of intestate succession²⁸ is far from clear.²⁹

Legal estates and equitable interests may exist in an advowson as in other real property; thus a life interest in an advowson is necessarily equitable, while a fee simple absolute in possession may exist as a legal estate.³⁰

Advowsons may be either appendant, i.e., annexed to a manor, so that the right of presentation will pass to the owner for the time being of the manor; or in gross, i.e., held independently of land. They are subject to a number of important restrictions (in particular, upon their sale) both at common law and by statute,³¹ which prevents serious abuses of this incursion of property into religion. These are more appropriate to books on ecclesiastical law³² than to a textbook on real property.

Part 3

TITHES

A tithe was the right of a rector to a tenth part of the produce of all the land in his parish. In some cases a rector was an individual while in others the rectory was vested ("appropriated") in a monastery, who appointed a vicar to perform the necessary

²⁷ *Ante*, p. 518.

²⁸ *Ante*, p. 523.

²⁹ They are disposable by will, and so within Pt. IV of A.E.A., 1925: see s. 52. That makes them subject to a trust for sale on an intestacy (*ante*, p. 523) but their sale is restricted by the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment) Measure, 1923, which in most cases prohibit sale after two vacancies subsequent to July 14, 1924, or after a declaration made under seal by the owners. Vaisey J. described this conflict as "an insoluble problem": *The Times*, November 10, 1944: but see 1945 Conv.Y.B. 296. A similar problem arises if an advowson is devised to joint tenants or tenants in common. But the Measure does not prevent the sale of land to which an advowson is appendant.

³⁰ *Ante*, p. 134; L.P.A., 1925, ss. 1, 205 (1) (a).

³¹ See n. 30 above.

³² e.g., *Cripps on Church and Clergy*, 8th ed., 253-263.

had replaced whom, or that they ever had, or ought to have imputed to them, any intention of discharging the outgoing commissioner from liability and taking the incoming commissioner instead as one of their debtors or potential debtors. Nor, for that matter, has anything been put before me to suggest that a new commissioner, when appointed, had any idea that he was agreeing with a large number of Banaban landowners to undertake the obligations of a large number of contracts, and thereby releasing his predecessor in office. There has been nothing to suggest that a new commissioner even learned the names of those with whom he was said to have been contracting, or knew of the changes that occurred by death and the devolution of the land.

Even the 1920 transaction, so much relied upon by Mr. Macdonald, seems to me to point against novation, rather than in its favour. I say this quite apart from Mr. Macdonald's vacillations about the date on which the first novations occurred, ranging from some date between the meeting with the Banabans on October 16, 1920, and December 31, 1920, to the date when the British Phosphate Commissioners first paid the royalties. In the end, that last date was ousted by December 31, 1920, as Mr. Macdonald's first preference; but even if that is right, such uncertainties do not provide favourable soil for a rich crop of novations. What seems to me to be most significant is that at the time of the change-over, as I have mentioned, explanations were given to the employees about their relationship with the company and the British Phosphate Commissioners, and explanations were given to the Banabans about the relationship of the British Phosphate Commissioners with the local administration. Yet not a word seems to have been said about the matter that is relevant to novation, namely, the relationship of the individual Banaban landowners to the company, a body capable of perpetual existence, and the replacement of that body by three individual unincorporated commissioners. If this had been explained to the Banaban landowners and accepted by them, the drawing of the inferences for which Mr. Macdonald contends when each commissioner was replaced by another would present far fewer problems: but that was not the point to which the explanations were directed.

In a sense, one of the strongest points in Mr. Macdonald's favour was one which, as a seasoned advocate, he never made explicit in the somewhat crude form in which I propose to put it, though he saw to it that its presence could not pass unnoticed. Bluntly stated, it is that it would be unfair and wrong for the present commissioners to escape liability by reason of their unincorporated condition and the failure of the governments to operate any proper machinery for ensuring that each generation of commissioners was in law not only entitled to the benefits of the company's undertaking but also subject to the burdens. Therefore the court ought to strain to find a series of novations so as to bring about the proper result.

With the whole of that proposition up to the word "therefore" I wholeheartedly agree: but with the "therefore" and what follows I cannot agree, at any rate to the extent that the straining by the court should achieve success. It will be remembered that clause 10 of the

indenture of December 31, 1920, provided for the making of vesting declarations when one commissioner replaced another. Yet neither this nor any other machinery for ensuring continuity in a legal sense seems to have been operated by the governments or the commissioners. I am indeed reluctant to say that the present commissioners should be able to escape liability on the ground that nothing had been done by them or their governments which would expose them to liability for the acts and omissions of their predecessors. Nevertheless I cannot permit that reluctance to induce me to hold that despite facts so unpromising for a massive series of novations, these novations should still be inferred. In my judgment there have been no novations which would make the present British Phosphate Commissioners liable to the plaintiffs.

(6) *Benefit and burden.* I next consider the principle that he who takes the benefit of a transaction must also bear the burden. As might be expected, this was the subject of extensive argument, and much discussion of the authorities; and I must consider it at length. There was general agreement that in a number of respects the present case did not fall within any of the authorities; and one of the many questions was whether the principles to be found in the authorities were properly applicable to this case, and what those principles were.

The basic principle has plainly been expanding. Its origin appears in at least two forms: see *Megarry and Wade, The Law of Real Property*, 4th ed. (1975), p. 750. One form of the principle is as a technical rule relating to deeds. If a person is named as a party to a deed, but does not execute it, the deed will nevertheless be held to bind him if he knowingly takes the benefit of it. In that form, it is not much more than part of a rule for determining who are to be treated as being parties to a deed. In another form, the rule is that if by an indenture to which A and B were the only parties A granted land to B for life with remainder to C, on terms that the land was to be held subject to certain conditions, then if C entered after B's death and took the land by virtue of the indenture, he thereupon became bound by the conditions, even though he was no party to the indenture. This is the instance given in a passage in *Litt.* 374 (and in *Co.Litt.* 230b) to which reference is made in the cases. In each form, it will be observed, the principle applied only to a specified person, either named as a party to the deed, or named (or perhaps ascertainable) as the grantee of an estate.

Side by side with these technical instances, and probably underlying them, was the simple principle of ordinary fairness and consistency that from the earliest days most of us heard in the form "You can't have it both ways," or "You can't eat your cake and have it too," or "You can't blow hot and cold." The thought also appears in Latin, in a maxim that I shall mention in due course. With such foundations or parallels, it is not surprising that the principle has been expanding in its scope; and one of the questions is how far it can properly be carried in transcending technicalities. Before I turn to the cases, it is convenient to consider certain aspects of the doctrine that have been settled or are emerging. By no means all of them are clear.

(a) **CONDITIONAL BENEFITS AND INDEPENDENT OBLIGATIONS.** One of the most important distinctions is between what for brevity may be called conditional benefits, on the one hand, and on the other hand independent obligations. An instrument may be framed so that it confers only a conditional or qualified right, the condition or qualification being that certain restrictions shall be observed or certain burdens assumed, such as an obligation to make certain payments. Such restrictions or qualifications are an intrinsic part of the right: you take the right as it stands, and you cannot pick out the good and reject the bad. In such cases it is not only the original grantee who is bound by the burden: his successors in title are unable to take the right without also assuming the burden. The benefit and the burden have been annexed to each other *ab initio*, and so the benefit is only a conditional benefit. In the other class of case the right and the burden, although arising under the same instrument, are independent of each other: X grants a right to Y and by the same instrument Y independently covenants with X to do some act. In such cases, although Y is of course bound by his covenant, questions may arise whether successors in title to Y's right can take it free from the obligations of Y's covenant, or whether they are bound by them under what for want of a better name I shall call the pure principle of benefit and burden.

(b) **QUI SENTIT COMMUNEM SENTIRE DEBET ET ONUS.** This ancient maxim, to be found in 2 Co. Inst. 489, bears an uncertain relationship to the principle under discussion. In spirit it is the same: yet the instances of its operation given in the books are curiously restricted and haphazard: see *Broom's Legal Maxims*, 10th ed. (1939), pp. 482-486. Cases of burdens annexed to property binding those who take it are given as instances of the maxim, and so are cases of election. I shall not attempt to explore these thickets. In the case of burdens attached to land, such as mortgages or easements, it hardly seems necessary to resort to any doctrine about benefit and burden: if you take something that has a burden annexed to it, you have to take it as it is, burden and all. Again, you cannot pick out the good and leave the bad. If more Latin is required, *transit terra cum onere* will do. The parallel between this head and conditional benefits under the previous head is obvious. The only essential difference seems to be that where there is a burden which in its nature is annexed to property there will be no initial question of determining whether or not the burden is a condition of the benefit. In neither case is there any question of applying any pure principle of benefit and burden: each in essence consists merely of having to take a thing as it stands. Perhaps I should add that there may be some ambiguity about the word "burden." Sometimes it is used in the sense of burdens annexed to property, such as mortgages, and sometimes it is used in the sense of some onerous but independent obligation which under the pure benefit and burden principle may or may not bind successors in title. In most cases the context will make the sense clear. I do no more than indicate a possible source of misunderstanding of what has been said in some of the cases and elsewhere.

(c) **OBLIGATORY AND OPTIONAL.** In some cases the principle of benefit and burden appears to operate in an obligatory form. In the two technical instances that I have given, once the benefit has been taken under the deed, or once the estate has been claimed under the indenture, the burdens are as binding as if the taker of the benefit or estate had executed the instrument. In the case of conditional benefits, the result seems to be the same: take the benefit, and at once the burdens bind you. But in the case of independent obligations, the pure principle of benefit and burden (if it applies at all) seems at least in some cases to operate in an optional manner. Thus if the benefit is a licence to cross a neighbour's land and the burden is the making of an annual payment, an assignee of the licence appears to be able to resist claims for future payments if he ceases to enjoy the licence. In such a case, he can say that he has never become contractually bound to make the payments, and that he is taking no benefit for the period to which the payments relate. Plainly there is a great difference between saying "As soon as you accept any benefit you become subject to the whole of the burdens, past, present and future," and saying "As long as you continue to accept the benefit you must continue to bear the burden." Whether in the latter case there would be any right to resume enjoying the benefit and bearing the burden after there has once been a discontinuance I do not know.

(d) **CONTINUING AND UNITARY BURDENS.** The previous head leads to the present head. In some cases the burden may be a continuing burden, such as an obligation to pay an annual sum. In other cases the burden may be a future unitary burden, such as an obligation to pay compensation for damage, or to restore land after opencast working; and of course there may be many variants and mixtures of burdens. In the case of continuing burdens, the pure principle of benefit and burden seems to apply in the optional form discussed under the previous head. But in the case of unitary burdens, how does that principle apply? Does every successor in title to the benefit become liable for the whole of the burden when it accrues, however brief his enjoyment of the benefit? If not, how is the burden to be borne?

(e) **RELATIONSHIP TO ASSIGNMENT OF BENEFIT.** It was, of course, accepted on all hands that the burden of positive covenants will not run with the land; and if matters such as novation are left on one side, it is clear that in general contractual burdens are not assignable, though contractual benefits are. How, then, does the principle that he who takes the benefit must bear the burden fit in with cases where benefits such as the right to receive certain payments under a contract have been assigned but the assignee of those benefits has been held or assumed to take free of the burdens under the contract?

(f) **ACTIVE AND PASSIVE.** The principle in its pure form may operate in two different ways; and during the argument these became known as the "active" and the "passive" forms. The active form looks to the future. X is seeking to exercise some right which has been assigned to him. If the doctrine applies, he can exercise the right only if he accepts

the burdens; he has no choice. The passive form looks to the past. X has done some act, such as entering on Y's land and damaging it, and he is being sued by Y. X may then have a choice. He may claim to be an assignee under a grant of the right to do the act, in which case, if the doctrine applies, he must bear the burdens imposed by the instrument creating the right, e.g., an obligation to pay compensation. Alternatively, he may refrain from relying on the instrument, and instead accept liability on the footing that his act was unauthorised. If the rate of compensation and the measure of damages at common law differ, the active and passive forms may thus operate differently, though I do not know that there is any great difference in principle between them.

(g) LEGAL AND EQUITABLE. It seems clear that the doctrine may operate not only at law, as in the two technical instances that I have given, but also in equity, as appears from the cases.

I think that I have said enough about some of the categories and problems of this branch of the law to make it desirable to turn to the authorities. They fall into three groups. In the first, the issue was on the pure principle of benefit and burden. The burden was held to have passed not because the right granted was held to be conditional upon assuming the burden, or to be qualified by it, but because of the principle that he who takes the benefit must bear the burden. In the second group of cases the issue has been whether or not the right granted was a conditional or qualified right; in all the cases save one the right has been held to be conditional, and the claimant has succeeded. The third group of cases consists of cases cited on the relationship that I have mentioned between the principle of benefit and burden, and the assignment of benefits. However, it will be seen on examination that there are cases in this category which really belong to the second group.

The leading case in the first group is the well-known decision of Upjohn J. in *Halsall v. Brizell* [1957] Ch. 169. In that case the owners of an estate laid it out in 174 building plots, and formed roads and sewers, a sea wall and a promenade and so on; and in disposing of the building plots the developers, as I shall call them, retained the roads, sewers, sea wall and promenade. A deed of covenant made between the developers, as trustees for the parties to the deed, and the owners of plots made a number of provisions for the regulation of the estate. All this was done in 1851, in the spacious conveyancing language of the day; I shall try to put matters briefly. One of the provisions was that each party to the deed, and his successors, should contribute and pay a due and just proportion, in respect of his plot of land, of the expenses of maintaining the roads, sewers, promenade and sea wall; and this was supported by a power of distress for the developers and their successors. The deed also provided machinery for the proprietors of plots to determine the expenses in general meeting, with provisions for voting and so on.

The litigation arose in respect of a house on one plot which, without being structurally divided, was let to five separate tenants; and much turned on a resolution passed at a general meeting of plot-holders in 1950. That resolution was as follows:

calls for every house divided into two or more separate flats or dwellings, with a limit of three calls per plot. The defendants, who were executors of the plot owner who had divided the house, duly paid single calls in respect of the house. But they refused to pay the two additional calls each year which the plaintiffs (who were the present trustees of the deed) had demanded in accordance with the resolution. The plaintiffs did not sue for payment, but instead took out an originating summons which raised two main questions: first, whether the deed was valid and effectual at all in so far as it purported to make the successors of the original contracting parties liable to pay calls; and second, if it was, whether the 1950 resolution imposing additional calls was a valid resolution.

Upjohn J. answered the second question by holding, for reasons that I need not discuss, that the resolution was ultra vires and void. That by itself sufficed to dispose of the case: and a declaration that the resolution was ultra vires and void was accordingly made. The trustees therefore failed in their claim, for the single calls had been paid, and only the liability for the additional calls was in issue. But before reaching this conclusion, the judge had considered the first question that was before the court; and of course it is this question that is important in the present case. On this, the judge said, at p. 182, that it was plain that the defendants "could not be sued on the covenants contained in the deed for at least three reasons." These were that a positive covenant such as that in question did not run with the land; that the provisions for the payment of calls plainly infringed the rule against perpetuities; and that it was conceded that the provision for distress, not being annexed to a rentcharge, was invalid.

On these last two points I may mention, first, that the case seems to have escaped notice in books on perpetuities. Second, on rentcharges, there is an interesting contrast with *Morland v. Cook* (1868) L.R. 6 Eq. 252. In that case, a covenant by various landowners to share the expenses of maintaining a sea wall was held to be enforceable at law against successors in title of the covenantors. The reason subsequently given by the Court of Appeal was that, although framed as a covenant, the obligation was really a rentcharge; and this conclusion was reached because the covenant was to pay the money "out of the said lands": see *Austerberry v. Oldham Corporation* (1885) 29 Ch.D. 750, 774, 775, 782.

Having held that the defendants could not be sued on the covenants of the deed, Upjohn J. continued [1957] Ch. 169, 182:

"But it is conceded that it is ancient law that a man cannot take benefit under a deed without subscribing to the obligations thereunder. If authority is required for that proposition, I need but refer to one sentence during the argument in *Elliston v. Reacher* [1908] 2 Ch. 665, 669, where Lord Cozens-Hardy M.R. observed: 'It is laid down in *Co.Litt.* 230b, that a man who takes the benefit of a deed is bound by a condition contained in it, though he does not execute it.' If the defendants did not desire to take the benefit of this deed

to pay the obligations thereunder. But, of course, they do desire to take the benefit of this deed. They have no right to use the sewers which are vested in the plaintiffs, and I cannot see that they have any right, apart from the deed, to use the roads of the park which lead to their particular house, No. 22, Salisbury Road. The defendants cannot rely on any way of necessity or on any right by prescription, for the simple reason that when the house was originally sold in 1931 to their predecessor in title he took the house on the terms of the deed of 1851 which contractually bound him to contribute a proper proportion of the expenses of maintaining the roads and sewers, and so forth, as a condition of being entitled to make use of those roads and sewers. Therefore, it seems to me that the defendants here cannot, if they desire to use this house, as they do, take advantage of the trusts concerning the user of the roads contained in the deed and the other benefits created by it without undertaking the obligations thereunder. Upon that principle it seems to me that they are bound by this deed, if they desire to take its benefits."

It will be seen that this passage is founded on a concession by counsel. Upjohn J. asked, at p. 180: "Is there not a rule that a person who accepts the benefit of a deed must also accept the burden of it?" Counsel for the defendants replied: "Yes, that is conceded"; and he cited *Norton on Deeds*, 2nd ed. (1928), p. 26, and the observation in *Elliston v. Reacher* which was cited in the passage of the judgment that I have just read. Before I go any further, I think I should say something about this observation and its sequel.

It is obvious that there is a considerable difference between a rule which applies only to a specified person who is named as party to a deed or as grantee of an estate, and who takes a benefit under the deed or takes the estate, and a rule which applies to "a man" or "a person" who takes the benefit of a deed. In the former case, the rule applies only to a persona designata who is within the contemplation of the other parties to the deed as being intended to take the benefits or the estate under it and bear the burdens of it: the doctrine simply cures the defect of that person not having bound himself by executing the deed. (It is old law that a person who is not a party to a deed may nevertheless bind himself by a covenant in the deed if he executes it: *Salter v. Kidgley* (1689) Carth. 76.) In the latter case "a man" or "a person" may, if taken literally, be anyone in the world, and outside the contemplation of the parties to the deed, though some limitation must no doubt be implied.

With that in mind, it seems plain that the interlocutory observation of Sir Herbert Cozens-Hardy M.R. in *Elliston v. Reacher* [1908] 2 Ch. 665, 669, the concession by counsel in *Halsall v. Brizell* [1957] Ch. 169, and what Upjohn J. said in that case, all involve a substantial expansion of the principle. The proposition laid down in *Co.Litt.* 230b (and *Litt.* 374, which must be read with it), was not in terms of "a man" or "a person," but merely in terms of the grantee of an estate. Similarly, the passage in *Norton on Deeds*, 2nd ed. (1928), p. 26, cited in counsel's concession was

merely in terms of a party to a deed who does not execute it. Cozens-Hardy M.R.'s observation was, indeed, an interlocutory observation not repeated in his judgment; and one must bear in mind the warning of Viscount Simon L.C. that such observations are not judicial pronouncements, and decide nothing, even provisionally, but are merely made in order to elucidate the argument or point the question or indicate what needs investigation: *Practice Note* [1942] W.N. 89. Furthermore, the judgment in *Halsall v. Brizell* was not a reserved judgment; indeed, I observe, a little wistfully, that the case was argued and decided in a single day.

Let it be accepted that a degree of historical frailty can be detected in the forensic process in this sphere, and let it also be accepted that, at any rate on one view, what Upjohn J. said on the point was not necessary for his decision and forms no part of his ratio decidendi. Accept all that, and there still remains the fact that, quite apart from other authorities, the propositions enunciated by Cozens-Hardy M.R. and Upjohn J. seemed right to them. Couple that with the simple principle of fairness and consistency that I have mentioned, and it will be seen that there is good reason why I should be ready to adopt and apply the broader proposition that has emerged from the technicalities of past ages. At the same time, in considering the application of the expanded doctrine to the case before me, it will be necessary to consider what are the true limits of that doctrine. With that, I turn to the only other case in this first group.

December 2. MEGARRY V.-C. continued:

In *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, the owner of Blackacre erected a building with foundations which trespassed to a small extent on Whiteacre. The owners of Blackacre and Whiteacre then orally agreed that the trespassing foundations of Blackacre could remain but that Whiteacre should have a right of way over Blackacre. The agreement was never registered as a land charge, and Blackacre passed to purchasers. Difficult questions of registration arose, as well as questions of estoppel. But the point with which I am concerned was that which appears at p. 394. There, Lord Denning M.R. applied the principle that he who takes the benefit must also take the burden, referring with approval to *Halsall v. Brizell* [1957] Ch. 169. "So long as" the owners of Blackacre took the benefit of having foundations which reached into Whiteacre, he said, they must shoulder the burden of the right of way over Blackacre: "so long as" the owner of Whiteacre took the benefit of the right of way, he must allow the trespassing foundations of Blackacre to remain. Danckwerts L.J. took a similar view, at pp. 399, 400, whereas Winn L.J. put the emphasis on estoppel.

The words "so long as" plainly appear to indicate that with continuing benefits and burdens on both sides the burdens could be escaped at the price of ceasing to enjoy the benefits. A similar view appeared in *Hopgood v. Brown* [1955] 1 W.L.R. 213, 226; but that was a case of reciprocal licences, and I think that Sir Raymond Evershed M.R. was putting matters more on the basis of estoppel than on a basis of benefit and burden. However, the point seems to have been explicitly decided by the Supreme Court of Canada in *Parkinson v. Reid* (1966) 56 D.T.R. (C.N.

315. There, in the absence of privity either of contract or of estate, it was held that defendants who derive title under an instrument which conveyed land with the right to use the plaintiff's wall but subject to certain repairing obligations were not liable on those obligations after they had ceased to use the wall. Before I leave *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 I should add that it makes it clear that the principle applies in the case of parcel agreements as well as for deeds, and that in that case the principle was operating in equity, rather than at law.

I have now considered the only cases cited which seem to me to depend on the pure principle of benefit and burden. I must next turn to the second group of cases that were cited on this topic, being those which depended on whether or not the benefit was a qualified or conditional benefit. I will first take *Aspden v. Seddon*. This was litigated in two stages: *Aspden v. Seddon* (1875) 10 Ch.App. 394 was in Chancery, and *Aspden v. Seddon* (No. 2) (1876) 1 Ex.D. 496 was at common law. The facts are a little complicated, but in essence they were as follows. A landowner conveyed part of his land to a trustee for a company, excepting and reserving the mines and minerals and the right to work them. The exception and reservation ended with the words "so that compensation in money be made" by the landowner and his successors "for all damage that shall be done to the erections on the said plot by the exercise of any of the said excepted liberties, or in consequence thereof." There was also an express covenant for the landowner and his successors to pay compensation for damage to buildings caused by mining.

As required by the conveyance, the company erected a cotton mill on the land. There was then a devolution of the landowner's adjoining land and his mining rights upon the Seddons, and also a devolution of the mill upon Aspden. The Seddons worked the minerals and damaged the mill, whereupon Aspden sued them in Chancery for an injunction to restrain the working, and damages. This claim failed on the ground that the conveyance gave the right to the Seddons to let down the surface and damage the mill on paying compensation, and that the claim for damages was a matter for the courts of law: the case, I may say, was decided before the Judicature Act 1873 came into force.

In *Aspden v. Seddon* (No. 2), 1 Ex.D. 496, the litigation arose on a case stated by an arbitrator, the main question being whether Aspden were entitled to recover compensation from the Seddons. Both in the Exchequer Division and in the Court of Appeal it was held that the answer was Yes. The essence of the reasoning was that the only right to let down the surface that the Seddons had was a right sub modo, or a conditional or qualified right, the condition being the payment of compensation. James L.J., at p. 509, did not think that the law of England could be in such a state that the defendants could justify a trespass in opening a mine under an authority in which there was a qualification, but refuse to pay anything in the way of compensation under the terms of that qualification. He held it plain that "a man exercising the right is to pay the compensation . . . the simple thing is that the man who has exercised the right is to pay for the damage." Mellish L.J., at p. 509, treated

a right to let down the surface subject to the condition. It could then be said, "You shall let down the surface, but you shall only do that sub modo that the man, whoever does let down the surface by getting minerals, shall pay compensation." In the court below Bramwell B., at p. 504, made it explicit that a remedy lay at common law for the compensation.

Westhoughton Urban District Council v. Wigan Coal and Iron Co. Ltd. [1919] 1 Ch. 159 does not seem to me to add much to *Aspden v. Seddon*. The essential point was that what had been granted was merely a qualified right to work the minerals under certain land, the qualification being an obligation to pay compensation for damage done. The qualification appears at p. 160; and see also at pp. 171, 174. There was also a covenant by the grantees not to do damage, and to make it good if they did. The grantees worked the minerals and did damage, and were sued by lessors of the land who derived title under the grantor of the mining rights. The lessors were held to be entitled to damages against the grantees. Although they could not claim as assignees of the covenants, they were entitled as lessors to have their land supported except so far as this right had been taken away by the grant of mining rights. The grantees could therefore either rely on the grant and comply with its obligation to pay compensation, or else abstain from relying on it and pay damages at common law. For things past, the grantees had this choice; but for the future the lessors could force the grantees to rely on their grant by claiming an injunction against them: see *per* Sir Charles Swinfen Eady M.R. at pp. 171, 172. From p. 177 it appears that the order of the Court of Appeal included liberty to apply for an injunction.

I pause to emphasise that in these cases there is plainly an initial question of construction. If an instrument grants rights and also imposes obligations, the court must ascertain whether upon the true construction of the instrument it has granted merely qualified or conditional rights, the qualification or condition being the due observance of the obligations, or whether it has granted unqualified rights and imposed independent obligations. In construing the instrument, the more closely the obligations are linked to the rights, the easier it will be to construe the instrument as granting merely qualified rights. The question always must be one of the intention of the parties as gathered from the instrument as a whole. It is familiar law that in leases the tendency is to construe the covenants of the lessor and the covenants of the lessee as being independent of each other, so that the observance of the one is not conditional upon the observance of the other. Such covenants, of course, usually appear separately and distinctly in the lease.

In considering this question, the learning of Mr. Macdonald took me to a decision of the House of Lords on the point, reported only as a note to another case. The decision is *Chamber Colliery Co. Ltd. v. Twycroft* (1893) [1915] 1 Ch. 268n. In that case a grant of mining rights was made, the grantees doing as little damage as the nature of the case would admit of, and making satisfaction to the grantors for all unavoidable damage by making annual payments at a certain rate per acre. There was also a covenant by the grantees that if any damage to any buildings

for it to the grantors over and above the annual payments. The proceedings were between parties who derived title from the grantors and grantees respectively: and the plaintiff claimed damages and an injunction in respect of damage to his land and buildings caused by mining. It was argued that the covenant for making full satisfaction for damage to buildings was a personal covenant which could not run with the land, and that it could not be treated as a limitation or qualification of the right to work the mines.

In a speech with which Lord Herschell L.C., Lord Macnaghten and Lord Morris simply concurred, Lord Watson rejected this contention. He said, at p. 273, that the covenant did not profess to impose a burden running with the land.

"It is an inherent qualification of the coal owner's licence to work with the effect of letting down the surface, and provides that he shall not do so except upon the condition of compensating the owner for the time being of buildings which are injured by his operations. I do not think it is open to question that what is in form a covenant may nevertheless appear from the whole of the provisions of the instrument to be intended to operate as a condition also."

From the short report it is not very easy to see the exact grounds on which this conclusion was based. One thing seems plain: the opposite conclusion would have produced strange results. The provision for making satisfaction for damage to the surface by means of annual payments was plainly worded so as to qualify the right to mine, much as in *Aspden v. Seddon* (No. 2), 1 Ex.D. 496. If the covenant to make full satisfaction for damage to buildings had been held to be an independent covenant, the right to mine would be in a curious state of being qualified as to compensation for one form of damage and unqualified as to another. That curiosity, and the express references to the payments under the covenants being "over and above" the annual payments to be made under what were plainly words of qualification, seem to me to provide ample grounds for holding that both provisions for compensation were intended to qualify the right to mine. In the phrase of Mr. Browne-Wilkinson, the words of the grant showed that the covenant was intended to be an extension of the condition. Whether the House was actuated by reasons of this sort I do not know; but at least it seems possible, and, indeed, probable.

The last case in this second group is *Radstock Co-operative and Industrial Society v. Norton-Radstock Urban District Council* [1967] Ch. 1094; [1968] Ch. 605. This concerned a sewer laid in the bed of a river. Predecessors in title of the owner of part of the bed had granted a lease to predecessors in title of the sewage authority, authorising those predecessors to lay, maintain and use the sewer. The lease contained various covenants by the authority's predecessors with the lessor, including a covenant in clause 14 not to interfere with the flow of the river. (I may say that although the report at first instance includes only an extract from clause 14 (see [1967] Ch. 1094, 1096), the clause appears in full at [1968] Ch. 605, 610.) In time the sewer became exposed, and caused eddies which eroded the banks and did other damage; and the owner then sued the authority, inter alia, on the covenant. On this

point, the issue was whether the authority had merely a qualified right to maintain the sewer, qualified by the obligation of clause 14 not to interfere with the flow of the river, or whether the right was unqualified and clause 14 imposed an independent obligation.

At first instance, Ungood-Thomas J. held, at p. 1120, that the latter was the correct view, and on appeal Harman and Russell L.J.J. agreed, at pp. 628, 632: in the words of the former, "this covenant is not and cannot be construed as a condition." The dissent of Sachs L.J. was not on this point. The conclusion that clause 14 did not qualify the rights of sewer granted by the lease was in all cases reached as a matter of construction in statements that were brief and emphatic, though Ungood-Thomas J. did discuss and distinguish *Westhoughton Urban District Council v. Wigan Coal and Iron Co. Ltd.* [1919] 1 Ch. 159. *Chamber Colliery Co. Ltd. v. Twycroft* [1915] 1 Ch. 268n. was not cited, and Mr. Macdonald contended that if it had been the decision on this point would have been different. However, the distinctions between the two cases on this point are too obvious to require mention. I should be astonished if any of the judges in the *Radstock* case would have felt the least surprise at the proposition that what is in form a covenant may nevertheless appear from the instrument as a whole to be intended to operate as a condition also. Unhappily Ungood-Thomas J. and Harman L.J. are no longer able to speak for themselves; but, if asked, I would have expected them to say: "Of course: but what is there in this instrument to make that appear?" I will venture no hypothetical reply for Russell L.J., who, translated, is happily still with us; but I doubt very much if his answer would differ.

It is important to observe that this aspect of the *Radstock* case seems to have been argued and decided solely on the question whether the right to maintain the sewer was a qualified right, or was unqualified. There does not seem to have been any argument on the further questions that might arise if, as was the case, the right was held to be unqualified, namely, whether the pure principle of benefit and burden could be applied so as to make the authority liable. There is a sentence in the judgment of Ungood-Thomas J. [1967] Ch. 1094, 1119, which can be read as an oblique reference to the principle: but there is no reference in either court to *Halsall v. Brizell* [1957] Ch. 169 or to *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, then very recently decided.

I now come to the third group of cases, those cited on the relationship of the pure principle of benefit and burden to the assignment of benefits. As I have already indicated, the point is that if the benefit and burden doctrine is to be given the full width claimed for it, questions must arise on the many instances of assignees of the benefit of a contract not being bound by the burdens of that contract. Mr. MacCrimmon relied on *Cox v. Bishop* (1857) 8 De G.M. & G. 815, *Bogot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.* [1902] 1 Ch. 146, and *Barker v. Stickney* [1919] 1 K.B. 121. To these Mr. Macdonald replied with *Werderman v. Société Générale d'Electricité* (1881) 19 Ch.D. 246, *Dansk Røktstiftelse Syndikat Aktieselskab v. Snell* [1908] 2 Ch. 127, and *May v. Belleville* [1905] 2 Ch. 605.

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I do not think that I need examine these cases in detail. *Cox v. Bishop* holds that an equitable assignee of a lease who takes possession of the land is not liable to the lessor on the covenants of the lease. The case was argued and decided on privity, and not on any principle of benefit and burden. The *Bagot* case [1902] 1 Ch. 146 concerned a licence to use patents which had been assigned in equity. The benefit and burden principle was argued in an attempt to make the assignees liable on the burdens of the licence, but Vaughan Williams L.J. rejected it, relying on *Cox v. Bishop*: see at pp. 156, 157. Romer L.J. briefly cited *Cox v. Bishop* as showing that the plaintiffs had no special right to sue the defendants merely because the latter were equitable assignees (see at p. 161), and Cozens-Hardy L.J. simply expressed his agreement. This appears to be the strongest authority against the existence of any pure benefit and burden principle at all, although of course the authorities have not stood still since 1901. In due course I must return to this case.

In *Barker v. Stickney* [1919] 1 K.B. 121 the author of a book assigned the copyright to a publishing company, which covenanted to pay him a royalty. The copyright was later assigned to another company which succeeded to the publishing business, but the author was held not to be entitled to recover royalties from that latter company. The case was argued on variant forms of there being some charge or burden that was attached to the copyright assigned, or ran with it, but the Court of Appeal rejected them all. The case is a warning to authors, and others; and it accounts for the advice given to authors to see that they merely give the publishers a right to publish that is conditional upon the payment of royalties: see *per* Scrutton L.J., at p. 133. The case was decided purely as a matter of construction of the initial assignment (see *per* Bankes L.J., at p. 124 and *per* Warrington L.J., at p. 129), though Scrutton L.J. did also consider the question of covenants said to run with goods. The case is no authority on the pure benefit and burden principle, for that does not appear to have been argued: but the field is one in which that principle might well be applied so as to produce a more just result.

I turn to *Werderman's* case, 19 Ch.D. 246, a decision that was distinguished in both the *Bagot* case [1902] 1 Ch. 146 and *Barker v. Stickney* [1919] 1 K.B. 121. A patentee assigned his patent by an indenture which provided for certain payments to be made to him. The assignees assigned their rights to a company, and the patentee then claimed the payments from the company. The Court of Appeal held that the assignment made it plain that the parties intended the liabilities to attach to the patent itself. Lindley L.J., at p. 257, regarded the case as being almost the same as the dissolution of a partnership with an assignment of assets charged with an annuity to the outgoing partner: and in the *Bagot* case [1902] 1 Ch. 146, 157 Vaughan Williams L.J. said that the *Werderman* case was one of a charge or incumbrance imposed on the property. The *Dansk* case [1908] 2 Ch. 127, too, was a case about an assignment of patents; and Neville J. held that on the true construction of the assignment the vendor had a lien on the patents for the royalties, so that an assignee from the purchaser must pay the royalties to the vendor. The last three cases all seem to fall within the principle of the second

group of cases, concerned with whether or not the right granted was a qualified or conditional right.

May v. Belleville [1905] 2 Ch. 605 was rather different. A man sold part of his land, the contract providing for him to reserve rights of way over the land sold. The conveyance contained an appropriate reservation, but the purchaser did not execute it, though he took possession of what he had bought. The question was whether the purchaser and his successors were bound by the reservation. Such a case seems to me to fall squarely within one of the two old versions of the benefit and burden principle that I have mentioned, namely, that if a person is named as a party to a deed but does not execute it, the deed will nevertheless be held to bind him if he knowingly takes the benefit of it. Such a liability was held to exist at law at least as early as *Brett v. Cumberland* (1619) Cro.Jac. 521. However, none of this seems to have been argued, and Buckley J. held that the purchaser was bound in equity to give effect to the terms on which he obtained possession, and his successors in title were in no better case.

Before I go any further, I must return to the *Bagot* case [1902] 1 Ch. 146, and consider how far it is an authority against the pure benefit and burden principle. The case initially came before Kekewich J.: [1901] 1 Ch. 196. Before him, it was argued on contract and on whether the licence had had liabilities attached to it; and *Werderman's* case, 19 Ch.D. 246, was distinguished. The benefit and burden principle did not appear until the case reached the Court of Appeal. There it was presented on the footing that *Werderman's* case was a clear authority which supported it: see [1902] 1 Ch. 146, 150, 151. At p. 156 Vaughan Williams L.J. said that it had been contended that the defendants were directly liable to the plaintiffs, not at law but in equity, because they had had the benefit of the licence and had been acting under it.

"They have, it is said, received the benefit which has resulted from a contract to which they were not parties, and they have thereby taken upon themselves the burden of that contract. To my mind that has never been the law."

He then said that it seemed to him that this question had been clearly decided in *Cox v. Bishop*, 8 De G.M. & G. 815 (a case, it will be remembered, which was also one of an equitable assignee), and after citing from the judgment of Knight Bruce L.J., he said that that principle applied in the present case and in all similar cases. Romer L.J. did not discuss the benefit and burden argument, though he did say, at p. 161, that the fact that the defendants were equitable assignees "would not of itself give the plaintiffs any special right to sue the defendants, as was pointed out in *Cox v. Bishop*." Cozens-Hardy L.J. simply expressed his agreement, and added nothing.

I do not think that the *Bagot* case requires me to reject the pure benefit and burden principle. Only one Lord Justice really dealt with it; his judgment did not explore it in any detail; the argument on the point seems to have been brief, and it cited no authority; and, of course, *Halsall v. Brizell* [1957] Ch. 169 and *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 lay in the future. It is there and not the judgment of

Vaughan Williams L.J. in the *Bagot* case [1902] 1 Ch. 146, 156 that I think I should follow. The other assignment cases do not seem to me to provide any authority against the principle. A court is not to be treated as rejecting an argument that was never put before it, particularly when that argument rests upon a doctrine that is in the course of evolution.

I emerge from a consideration of the authorities put before me with a number of conclusions and a number of uncertainties. First, for the reasons I have given, I think that there is ample authority for holding that there has become established in the law what I have called the pure principle of benefit and burden. Second, I also think that this principle is distinct from the conditional benefit cases, and cases of burdens annexed to property. Although language speaking of benefit and burden is sometimes used in the latter classes of case, I do not think it is really apt, and it is liable to confuse. In such cases the rule is really a rule of "all or none," an inelegant but convenient expression that may be used for brevity. A burden that has been made a condition of the benefit, or is annexed to property, simply passes with it: if you take the benefit or the property you must take it as it stands, with all its appendages, good or bad. It is only where the benefit and the burden are independent that the pure principle of benefit and burden can apply.

Third, it is a question of construction of the instrument or transaction, depending on the intention that has been manifested in it, whether or not it has created a conditional benefit or a burden annexed to property. If it has, that is an end of the matter: if it has not, and the benefit and burden are independent, questions of the pure principle of benefit and burden may arise. On the question of construction, there is a possible parallel in the case of two or more things given by a will to the same person, e.g. a leasehold house and its contents: if the will is construed as making a single gift of the two things, as distinct from two separate gifts, the legatee cannot take one and reject the other, as he might wish to do if the lease is onerous.

Fourth, the application of the benefit and burden principle will normally come later than the question of construction. If the initial transaction has created benefits and burdens which, on its true construction, are distinct, the question whether a person who is not an original party can take one without the other will *prima facie* depend upon the circumstances in which he comes into the transaction. If, for instance, all that is assigned to him is the benefit of a contract, and the assignor, who is a party to the contract, undertakes to continue to discharge the burdens of it, it would be remarkable if it were to be held that the assignee could not take the benefit without assuming the burden. The circumstances show that the assignee was intended to take only the benefit, and that the burden was intended to be borne in the same way as it had been borne previously.

On the other hand, if the assignee takes as a purported assignee of the whole contract from a company which is on the point of going into liquidation, he undertaking to discharge all the burdens and to indemnify the company, then, unless the benefit and burden principle is to be rejected in its entirety, I would have thought that the circumstances

showed that he was not intended to take the benefit without also assuming the burdens, and that the result would accord with the intention, *vis-à-vis* not only the company but also the persons entitled to enforce those burdens. No doubt the terms of any relevant document would be of major importance; but I would regard the matter as one which has to be determined from the surrounding circumstances as a whole. One possible way of looking at it is to regard the subsequent transaction as doing what the initial transaction did not, namely, annex the burden to the benefit so that the one could not be taken free from the other: but there are difficulties in this.

Fifth, a problem that is unsolved (and, it seems, unconsidered) is that of who falls within the benefit and burden principle. In the old forms of the rule there was no difficulty: a person named as a party to a deed, or a person granted an estate by a deed, could be identified without difficulty. But when the rule came to be stated in the form of "a person" or "a man" who takes the benefit of a deed, the answer is not so obvious. Plainly this is wider than merely those named in the original instrument, but equally plainly it cannot sensibly mean anyone in the world. In *Halsall v. Brizell* [1957] Ch. 169 and in *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 the doctrine was applied to successors in title to land which one of the original parties had taken; and plainly such persons should be within the principle. But is it to be confined to those who are shown to be successors in title to land or other property? Should someone who has such a title be bound, while someone else, who may on investigation be found to have no proper title, take free? I do not see why there should be any such distinction. It seems to me that the principle ought to embrace anybody whose connection with the transaction creating the benefit and burden is sufficient to show that he has some claim to the benefit, whether or not he has a valid title to it. Mere strangers seem to me to be another matter: I would exclude them from the meaning of "a man" or "a person" for the purposes of the principle. I shall not attempt to explore the obvious difficulties in determining just where the dividing line lies or ought to lie.

I shall next consider whether the defendant British Phosphate Commissioners are liable under any form of the benefit and burden rule, whether pure or "all or none." First, there is the question of the construction of the 1913 agreement and the A and C deeds. In the former I can see nothing which gives any real support to the view that the benefits to the company under the agreement have been made conditional on accepting its burdens; and in particular that applies to clause 12 (a), relating to replanting. The mere fact that the same instrument creates both the benefit and the burden, or that they both relate to the same subject matter, cannot possibly, in my view, make the one conditional on the other. I can see no words in the instrument, or for that matter anything else, that manifest any intention to bring about this result. The contrast between this document and the documents in cases where there has been held to be a conditional benefit are obvious.

The A and C deeds are in like case. Of course, they have fewer clauses

nous matters such as clause 12 (d) and (e) of the 1913 agreement, which provide for uniform prices for goods and the supply of fresh water at 1d. a gallon. But I am quite unable to see anything which makes the grant of the rights to the company conditional on, or qualified by, the obligation to replant. In the result I hold that neither the 1913 agreement nor the A or C deeds confer benefits which are qualified by or conditional upon the replanting obligations. Accordingly, for the plaintiffs to succeed under this head the case must be brought within the pure principle of benefit and burden.

I propose first to consider whether the two defendant British Phosphate Commissioners fall within that principle. There are two questions. First, do the circumstances in which they became connected with the 1913 agreement and the A and C deeds show that they ought not to be able to take the benefit without accepting the burden; and, second, have they a sufficient title to the benefit? I can consider these together.

The first defendant became a commissioner on January 1, 1965, and the third on July 1, 1970: the second, as I have mentioned, died during the proceedings. There seems to be nothing special about the appointment of either. Each was put in a position of control over a large concern that had been carrying on the undertaking for over 55 years. The British Phosphate Commissioners have never been expressly incorporated, and it has not been contended that there has been any implied incorporation of them, whether for the purposes of their undertaking or otherwise. Furthermore, the machinery for vesting the assets of the concern in new commissioners never seems to have been operated. There may well have been what Mr. MacCrindle suggested, an equitable assignment of the assets of the undertaking to be inferred from the surrounding circumstances. Yet although not incorporated, the British Phosphate Commissioners carried on the undertaking in the manner of a corporation and not of a partnership. The death or retirement of one of the commissioners produced none of the complexities of a partnership. All that happened was that when a new commissioner was appointed he stepped into the vacant place, with hardly a ripple to show the change. All the plant, machinery, money and other assets of the concern, together with the rights of mining, built up over the years, sat there ready for the new commissioner to control with his brethren. So did the liabilities, whether for royalties or anything else.

When the first commissioners took over from the company, the contemporary documents and circumstances made it plain that the British Phosphate Commissioners were to take over not only the rights but also the liabilities: I have already read clause 1 (c) of the 1920 indenture. When thereafter a new commissioner was appointed there were no documents to make this plain, but the circumstances seem to me to be to the same effect. The thought that a new commissioner was intended to take over the assets, but not the liabilities, which the outgoing commissioner, stripped of the assets, was to bear for the rest of his life, and his estate after his death, seems to me to be absurd. I shall not pursue the matter in detail, since it seems to me overwhelmingly clear that at every stage of change the whole basis was that of there being no right

A question of any British Phosphate Commissioner having intended not to accept the benefits but to commit wholesale trespasses instead. Furthermore, the connection of the defendant commissioners with the instruments creating the benefits and the burdens seems to me to be ample for them to be held liable for the burdens if they took any benefits.

That brings me to the question of taking the benefits; and here there is a diversity between the 1913 agreement and the A and C deeds. In the course of a discussion on Day 9 Mr. Macdonald, while opening his case, found himself in difficulties over the application of *Halsall v. Brizell* [1957] Ch. 169 to the 1913 agreement. These arose because since 1922 no A or C deeds had been executed, and the benefit of the 1913 agreement to the company was that 145 acres should be acquired by the company under those deeds. (As I have mentioned, after 1920 no A deed was executed, but two C deeds were executed in June 1921 and one in January 1922; and that was all.) In the end Mr. Macdonald said that his *Halsall v. Brizell* point fell down in 1921 or 1922 for the 1913 agreement, and so while he still relied on it for the A and C deeds (as well as novation), for the 1913 agreement he could rely only on novation. On that footing the case proceeded until after the evidence was complete. However, on Days 87 and 88 Mr. Macdonald sought to revive his *Halsall v. Brizell* point on the 1913 agreement, and to rescind from the concession that he had made on Day 9. Not surprisingly, Mr. Browne-Wilkinson objected, on the ground that the defendants had met the case put forward by Mr. Macdonald after he had made his concession and had not dealt with the evidence on the footing that the point conceded would in fact be argued.

In the end, the benefits which Mr. Macdonald wished to rely upon, apart from the execution of the three C deeds, were the actual use of implied rights of access under the 1913 agreement; he disclaimed any reliance upon the mere existence of these rights of access as a benefit. I said that I would listen to Mr. Macdonald's submissions on the point, and not exclude them at that stage, and if necessary rule later; and on Day 93 I heard Mr. Macdonald's final submissions on this point, with a commentary from Mr. Browne-Wilkinson and Mr. Vinelott. Mr. Macdonald took his reliance upon the execution of the C deeds to the point of saying that the execution of a single C deed would expose the defendant commissioners to liability. He also urged a point on the British Phosphate Commissioners being trustees for the Crown.

I am not satisfied that there has ever been a sufficient taking of a benefit under the 1913 agreement to expose the defendant British Phosphate Commissioners to liability under that agreement. I think that Mr. Macdonald's first thoughts about the three C deeds were sound. These deeds concerned land which is not the subject of these proceedings, and I do not see how the execution of those deeds in 1921 and 1922 can really be brought home to the defendant British Phosphate Commissioners as being a real benefit taken by them. As it has developed, I do not think that the pure benefit and burden principle is a technical doctrine, to be satisfied by what is technical and minimal. I regard it as being a broad principle of justice, to be satisfied by what is real and substantial.

agreement, I am far from satisfied that any relevant access enjoyed by the defendant British Phosphate Commissioners was enjoyed under and by virtue of the 1913 agreement. Of course, this point illustrates the difficulty of reaching a proper conclusion on a subject that had not been raised before the evidence was heard, and on a contention which had been abandoned. I very much sympathise with counsel who, in a case of this complexity, seeks to assist the court by abandoning a point which he feels he cannot sustain, and then later finds that second thoughts appear to make the point arguable. However, sympathy for counsel must not override justice to the other side; and if I had to rule on the point I should hold, with a little hesitation, that it was not open to Mr. Macdonald. But my primary holding is that if the point is open to him it fails.

The A and C deeds are another matter. They produce a substantial stock of mining rights which successive British Phosphate Commissioners exploited over the years; and these cannot be brushed aside as being irrelevant or trivial. Nor can there be any question of successive British Phosphate Commissioners being unaware that it was by virtue of these deeds that they enjoyed substantial mining rights. In this connection I should mention the position of the individual plots in the present case. The claim for replanting is made by the first 10 plaintiffs, who between them allege that they own, wholly or in part, 17 plots of land. Four of these plots were the subject of P and T deeds alone, and not A or C deeds. Of these, Mr. Macdonald in the end wholly abandoned the claims in respect of plots 143 and 294, made by the ninth and the second plaintiffs respectively, since these plots were wholly outside the 250 acre area. For the same reason he abandoned part of the claims for plots 263 and 316, made by the eighth and tenth plaintiffs respectively, leaving those claims in being only to the extent of about half and three-quarters of an acre respectively.

The other 13 plots out of the 17 were all the subject of A or C deeds. Their status as regards working was much clarified by a document marked D.A.2, coupled with the evidence of Mr. Chapman. Of the 13 plots, four were worked out before January 1, 1965, when the first defendant became a British Phosphate Commissioner, and they have not been used in his time. These four are plots C.17, C.109, C.162 and C.219. Two more plots (A.248 and A.282) would be in the same category but for the fact that phosphate from adjoining plots rilled over into them and was not removed until 1972. Four plots (C.101, C.179, C.183 and A.292) have been wholly or partly worked in the first defendant's time; two (C.120 and A.233), though partly worked before his time, remained in February 1973 still to be further worked (with C.120 in fact being fully worked in 1975); and one (A.287), though said to have been fully worked in 1913, was retained for further working until 1973, when it was decided that it was no longer required.

Mr. MacCrimble not unnaturally stressed that the obligation to replant under the A and C deeds was a plot-by-plot obligation, so that if no mining or other use of a particular plot had been made in the time of a defendant commissioner, he could not be said to have taken the benefit of the A or C deed for that plot, and so ought not to be subject to the burden of it. That, of course, has considerable logical force, and if each

of the plots had remained distinct, I think it would have carried much weight. However, the acquisitions made by the company under the A and C deeds were plainly made with the object of building up large areas that could conveniently be mined as a whole; and it was these large areas that were handed over to the first and successive British Phosphate Commissioners. The acquisitions were in effect pooled, and operations were carried out on a pooled basis.

In those circumstances, I do not think that it is open to the defendant commissioners to point to a particular portion of the pooled area and say that as that portion had never been used by them, they were not subject to the burdens relating to it. What their predecessors treated globally and what they succeeded to globally must, I think, be dealt with on a global basis. The defendant commissioners have plainly taken the benefit of these pooled areas; it is not as if they had segregated the worked-out plots and returned them to their owners as contemplated by the A and C deeds. Furthermore, it is clear that in many cases plots were partly worked, or regarded as being fully worked, and then later, with improved methods of extraction, the British Phosphate Commissioners of the day have returned and extracted more phosphate under the rights conferred by the A or C deed. Where a right to mine has been exercised by predecessors, and successors who acquire that right remain able to exercise it in circumstances which give reality to the right, I think that the successors take a sufficient benefit to invoke the principle. I do not consider that it is, or should be, open to a successor commissioner to say of a plot: "That was worked in the time of my predecessors. True, under the A or C deed I now have the right to work it further if I wish; but not unless I actually do so am I to be treated as taking a benefit under the deed. If instead of returning the plot to its owner I do nothing with it for years, thus keeping open any decision whether to work it further, and in the end I decide to work the plot no more, I have taken no benefit under the deed."

I do not find this an easy matter, and I can well see that there may be other views on it. However, after some hesitation I have reached the conclusion that this, when coupled with what I have said about the relationship of individual commissioners to the undertaking as a whole, is enough to establish that the defendant British Phosphate Commissioners took a sufficient benefit under the A and C deeds in issue to make the pure principle of benefit and burden capable of applying to them.

The next question is, "What burden?" This case squarely raises the questions of the application of the pure principle of benefit and burden to unitary burdens, a question which does not seem to have appeared in any previous case. In the case of continuing benefits and burdens, *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 supports the proposition that if the benefit is given up, the burden ceases; and of course if that applied to unitary burdens, questions might arise in each case whether the benefit was still being taken. But in the case of a unitary burden such as this, I do not think that it can be the case that a person taking the benefit can, when challenged, cease to take it, and then say that he is no longer subject to the burden of restoring the land, or paying compensation for the damage done, or doing whatever else there is to be done.

There is little enough help to be found in the cases. *Aspden v. Seddon* (No. 2), 1 Ex.D. 496 was, as I said, a case of a conditional benefit, and so not within the scope of the pure principle of benefit and burden: it was an "all or none" case. Nevertheless, in the Exchequer Division Cleasby B. did, as happened in some of these cases, discuss benefit and burden. In his view, the defendants were liable under the licence to pay compensation for damage to the land on the footing that "During the time that you have enjoyed it this burden—that is, the obligation to make compensation for what you have done—has come into existence": p. 508. The indication is very slender: but it seems to me to point in what I think is the right direction. I bear in mind, too, that the two old technical rules which at least have a place in the pedigree of the principle clearly seem to involve acceptance of the whole burden.

When the full features of the principle have been worked out, it may well be that if, as I think, any person who takes a sufficient benefit, for however short a period, is held liable for the whole burden, including future unitary burdens, it will also be held that there are implied rights of indemnity which will ensure that, whoever is held initially liable, the liability will ultimately be borne by the right persons. Where there is a terminal liability, such as the obligation of replanting in this case, it seems right that the burden should ultimately be borne by the latest in the chain of persons liable at the time when the burden accrues. Certainly this should be so in the case of an undertaking such as that of the British Phosphate Commissioners, where normal commercial methods contemplate some sinking fund or other provision for meeting future liabilities of this kind. On that footing, the two defendant British Phosphate Commissioners, being now in office, are in my judgment properly subject to the whole of the liability.

Next, does the liability exist only in equity, or is there liability at law? In *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, 394, it clearly appears that the right of way that arose under the principle of benefit and burden was merely equitable; but, of course, whether rights in land in England are legal or equitable depends to a considerable extent on the peculiarities of English land law. In *Halsall v. Brizell* [1957] Ch. 169 there is no express statement on the point: but what was in issue was an obligation to pay money, and in holding that in taking the benefit the defendants became liable to pay the money I think that Upjohn J. must have been contemplating an obligation at law. I can see no suggestion that there was any equitable obligation under a trust or, indeed, under any other concept of equity. Whether an obligation at law would depend upon an implied contract or upon some form of quasi-contract I shall not pause to inquire: *Goff and Jones, The Law of Restitution* (1966), I may say, considers neither of the cases that I have just mentioned.

In *Aspden v. Seddon* (No. 2), 1 Ex.D. 496, 504, Bramwell B. found it unnecessary to consider whether the correct form of action in the conditional benefit type of case was assumpsit, or an action on the case, or even tort. The pure principle of benefit and burden, if it applies at law, seems to be no less uncertain. It may be founded on acceptance, so that he who accepts the benefit is taken also to have accepted the

burden, or it may be a rule of law, so that he who accepts the benefit is bound by the burden, irrespective of any acceptance of it. In the conditional benefit type of case it may perhaps be easier to rest the doctrine on acceptance than in cases of the pure principle of benefit and burden: if you accept the benefit you cannot escape the consequence that you have accepted what forms part of the benefit, or is annexed to it, whereas under the pure principle the burden may be the price the law compels you to pay for taking the benefit. However, on the facts of this case I do not think that I need attempt to resolve these problems when considering whether liability under the pure principle exists at law or only in equity. As I have mentioned, there is *Halsall v. Brizell*; there is also the common law basis of the two old technical rules; and, more important, there is the nature of the burden, to which I must now turn.

Put shortly, it seems to me that whether the liability under the pure principle is legal or is merely equitable must primarily depend on whether the burden itself is legal or equitable. If the burden is merely equitable, so will be the liability. If the burden is legal, then I do not see why the liability should not also be legal. Whether the process that requires the burden to be assumed is legal or equitable, and whether it is based on acceptance or operates as a rule of law, what has been assumed should retain its quality of being legal if it is legal and equitable if it is equitable. If you take a burden, you must take it as you find it. If it be assumed that the pure principle operates only in equity (an assumption that I would not readily make), I do not see why equity should not say to the person seeking to take the benefit: "Unless you assume the burden at law, you will be restrained by injunction from taking the benefit." That, of course, would apply to the active form of the principle. In the passive form, some or all of the benefit has already been taken, and the question is whether the burden has to be borne. If some of the benefit still remains, an injunction could be granted, as in the active form: but if all of it has been taken, this could not be done. It may be that declaratory relief could be obtained, or possibly the principle of equity treating as done that which ought to have been done might be invoked. At all events, I think it would be most undesirable if the result were to be any different from that in the case of the active form.

My conclusion on the benefit and burden point is thus that the British Phosphate Commissioners are liable at law on the replanting obligations in the A and C deeds, and so are subject to the normal remedies (including damages) for any breach of that obligation. That, of course, is subject to other matters dealt with in this judgment. This liability could also be supported, if necessary, by the liability to pay damages in substitution for specific performance under the Chancery Amendment Act 1858 (Lord Cairns' Act) if this is a case in which specific performance could be decreed.

I can deal quite shortly with one last matter, namely, whether the plaintiffs are entitled to enforce the obligations. This arises because they are not, of course, original contracting parties. Subject to one point, I can see no difficulty. There is no reason why the benefit of the replanting obligations should not run with the land both at law and in equity. The objections could hardly more clearly touch and concern

the land, and the benefit of them must have been intended to run with the land and be enforceable by the owner for the time being. The present owners of the land are therefore the persons entitled to enforce the obligations.

The one point that I mentioned by way of reservation is that of jurisdiction. Mr. Vinelott submitted that where a plaintiff could establish his right to sue only by showing that he owned his plot of land, that brought the case within the doctrine of *British South Africa Co. v. Companhia de Moçambique* [1893] A.C. 602, and so the court had no jurisdiction because the action concerned foreign land. I have already considered this doctrine to some extent in *Ocean Island No. 2*, and also in relation to the sand. Of course, in *Ocean Island No. 2* the issue was somewhat different. Nevertheless, much the same point arises, namely, whether the ownership of the land is something that merely arises "incidentally" or "as a collateral incident," and so is outside the *Moçambique* doctrine, or whether that doctrine applies to it on the ground that the ownership of the land is an essential ingredient of the plaintiff's case, or the whole basis of it, and that this suffices.

It will be remembered that in the passage that I quoted from *St. Pierre v. South American Stores (Guth and Chaves) Ltd.* [1936] 1 K.B. 382, 397, Scott L.J. said that he understood the words of Lord Herschell L.C., at p. 626, in the *Moçambique* case to have meant that "it is the action founded on a disputed claim of title to foreign lands over which an English court has no jurisdiction." In the present case I cannot see what "disputed claim of title" the plaintiffs' action is "founded on." What the claim is founded on is the obligation to replant that the plaintiffs contend is binding on the commissioners; and the main battleground has been on whether the burden of the obligation binds the commissioners. There has been no contention that the benefit of that obligation has not passed to the present landowners, whoever they are: indeed, it was Mr. Vinelott who cited *Reid v. Bickerstaff* [1909] 2 Ch. 305, 319, 320, as part of his submission that it was because the benefits had passed in this way that the *Moçambique* doctrine barred the plaintiffs' path.

As in *Ocean Island No. 2*, I would hold that where, as here, there are no rival claimants to the land, a plaintiff who adduces evidence of his title to foreign land as a means of establishing that he is entitled to enforce some obligation or assert some right is not thereby brought within the *Moçambique* rule. Such a question seems to me to arise "incidentally" or "as a collateral incident," even though it may form a necessary link in the plaintiffs' path to success. A rung on a ladder may be essential for progress to the top, but it is not itself the top. The claim of want of jurisdiction fails.

With that, I have reached the end of the question of benefit and burden. In a sentence, I hold the defendant British Phosphate Commissioners liable at law on the replanting obligations in the A and C deeds by virtue of the pure principle of benefit and burden. I know that I shall not be alone in regretting the length of my judgment on these points: but difficult questions are involved, and the subject was argued over many more days than had been devoted to it in other cases. I am conscious that there is much that remains unresolved and open for

decision in the future; but that is inevitable in a developing branch of the law. My task, too, is to decide the case before me rather than to attempt a comprehensive rationalisation of this or any other branch of the law. In so far as I have considered matters, whether of principle or otherwise, that do not directly arise for decision, I have done so in an attempt to understand how the principles do or should operate.

(7) *Failure to prescribe trees.* I shall now consider the question of prescription by the resident commissioner. The obligation to replant under the A and C deeds is to replant the land as nearly as possible to the extent to which it was planted when the company's operations commenced "with such indigenous trees and shrubs or either of them as shall be prescribed by the resident commissioner for the time being in Ocean Island." It is common ground that there never has been any such prescribing. Furthermore, there has been no resident commissioner in Ocean Island since the last war, when Tarawa became the seat of government. Nor has there been any resident commissioner at all since January 1, 1972, when under the Gilbert and Ellice Islands (Amendment) Order 1971 the office of resident commissioner was replaced by that of governor.

The obligation to replant contained in the A and C deeds is, of course, to do so when the land should "cease to be used by the company for the exercise of the rights hereby granted"; and Mr. Macdonald contended that a letter dated March 2, 1971, from the Secretary of State for Foreign and Commonwealth Affairs to the chairman of the Council of Leaders showed that the Secretary of State then knew that much of the land in question could be returned to the Banabans. The extent of this land is shown by a British Phosphate Commissioners' memorandum dated April 16, 1969, which stated that 50 per cent. of the land in the eastern mining area and 50 per cent. of the land in the central mining area could be surrendered at that stage. (The memorandum, incidentally, illustrates the practice of the British Phosphate Commissioners in dealing with the land on a block basis rather than on a plot-by-plot basis.) This knowledge of the land no longer needed by the commissioners meant, said Mr. Macdonald, that the duty of the resident commissioner to prescribe the trees and shrubs arose at some time during the period 1969-1971.

Mr. MacCrindle, who also relied on other defences, said that if all else failed the defendant British Phosphate Commissioners contended that the claim was premature because there had been no prescribing by the resident commissioner. At that, Mr. Macdonald said he would claim damages for anticipatory breach: but he had difficulties in this on the pleadings, and ultimately he dropped the contention. The point cropped up in various forms at various stages of the proceedings. One point was whether in replacing the resident commissioner by the governor the Order in Council of 1971 had in effect simply substituted "governor" for "resident commissioner" in the replanting obligation. The answer to that appeared to be No. What article 5 (3) of the Order did was to provide that

"In the existing laws any reference to the High Commissioner or to the resident commissioner shall in their application to the colony be construed as a reference to the governor";

LISGAR SIX-UNIT MODULE RESIDENTIAL DESIGN CONCEPT

Projected Effects On: CONSUMER
MUNICIPALITY
REGION
PROVINCE

CONSUMER

i) Solar Orientation and Open Space

- Ideal unit orientation to sun, thereby maximizing solar exposure for active and passive solar energy unit gains -- in conjunction with increased daylighting to unit interior and lot exterior useable spaces.
- General increase per lot of outdoor useable space created by lot size and flexibility in unit siting.

ii) Community Safety, Streetscape and Maintenance

- Common ownership of mutual driveway links six owners, providing a basis for socio/recreational community interaction.
- Ideal 'visitor' and child surveillance opportunities, which create a high degree of community safety.
- Benefits of private drive 'exclusivity privilege' can be shared by the average homebuyer:
i.e. increased price in ownership, common improved level of landscape maintenance, community awareness.
- Increased privacy:
 - personalized community identification,
 - opportunity for intimate driveway lighting techniques, customized entranceways, unit numbering systems.

iii) Social Considerations

- Inhabitation of an aesthetically pleasing environment.
- Attainment of a high degree of individuality and privacy.
- Interdependency with other module homeowners in the general maintenance and upkeep of the private road common element -- creation of a common bond.
- Creation of a micro-community, at an intimate scale, whereby, basic "small town or village" (social) values can prevail.

(AAA)

LISGAR SIX-UNIT MODULE

iii) Social Considerations (cont'd.)

- Implementation of 'Neighbourhood Watch' programs, affording residents a greater measure of safety and crime prevention.
- Intra-module design principles offer increased traffic safety and pedestrian protection.
- Uniqueness of environment and the lifestyle derived from modular concept will contribute greatly towards the achievement of the basic human desire to lead the "good life".
- Establishment of a state of contentment and happiness from which flow tangible as well as intangible social benefits.
- Satisfaction from homeownership resulting in increased care of property.

iv) General Planning

- The six-unit module concept represents a return to the Garden City concept/approach to city planning, as a desirable alternative to the conventional suburban streetscape of parked cars and garage-fronted units that are symptomatic of the relentless asphaltting-over and walling-in of urban resources.
- Major contributing factors to suburban alienation are the 'sameness' (i.e. repetition) and consequent monotony of typical small lot subdivision environments, which have developed from the economic consequences of high servicing and land costs and the market pressure for larger unit sizes.
- The module concept, based on six units served by a small, private road -- but larger lots -- produces an environment where the emphasis is on maximization of residential amenities, instead of catering to outmoded utilitarian considerations. In essence, the private road is simply an extension of one's private driveway and design emphasis can be placed on the refinement of indoor and outdoor 'human' living space, not autospace.
- In all private roads surveyed to-date, there is a common owners' agreement to equitably share the attendant responsibilities of the roadway and a definable "community spirit" has evolved which is prevalent in the subsequent community interaction that has emanated from a co-operative spirit.
- The combination of intimate scale and the privacy of a cul-de-sac create a feeling of community safety which is impossible to achieve in conventional garage-fronted unit rows on 30'/40' lots developed pursuant to existing subdivision layouts.

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LISGAR SIX-UNIT MODULE

MUNICIPALITY

The benefits to the Municipality inherent in the module concept are multifold. In general, they may be stated in the following general categories:

- Finance
- Engineering
- Public/Private Safety
- Community Consciousness
- Suburban Lifestyle
- Energy Conservation
- Cityscape

Specifically, because of reduction in road length, there will be reduced road maintenance, snow ploughing and associated City costs.

There will be an 84% reduction in driveways, resulting in far fewer snow-blocked driveways to clear.

The grid-pattern can be applied as a public road framework for the private lane module concept, and the attendant cost-related advantages based on (transportation) energy conservation factors can be optimized.

Public safety is increased due to the fact that all vehicular egress from the six-unit private road to public streets will be contained in one roadway with forward motion only, vs. comparative conventional driveways which would have six driveways instead of one, with all traffic backing out on the public street.

REGION

- Long-term sanitary and water service maintenance costs will be reduced, in view of the fact that the average length of these services required for the six-unit module is less than that required on a comparative conventional subdivision layout. These economies of scale will eventually accrue to the benefit of the Region.
- Actual police surveillance can be reduced in the module development based on the increased safety inherent in the concept. Resident Neighbourhood Watch groups will be a natural outgrowth of the private drive and a high degree of visitor awareness and child safety will be evident.
- The re-introduction of the overall grid-road pattern by the module subdivision layouts will provide an opportunity to implement regional energy conservation policies.

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LISGAR SIX-UNIT MODULE

REGION (cont'd.)

- Regional social service programs can utilize the micro-community base provided by the module concept in areas such as Day Care, group recreation activities, increased community awareness, Neighbourhood Watch functions vs. vandalism and community counselling services related to suburban alienation and group identity programs.

PROVINCE

In terms of hard financial advantage, the Province will benefit substantially from a decreased pay-out of road subsidy monies to municipalities, based on the fact that there is a major reduction in public road length inherent in the module concept.

General

With regard to energy conservation, hundreds of reports and studies have been produced, outlining the need for measures designed to shorten automobile trip length and increase solar exposure of dwellings. The solutions postulated are largely cost-free and require only intelligent design principles. The modular lotting concept addresses energy conservation objectives in a perfectly straightforward manner and will produce substantial savings in automotive and home-heating fuel costs. The unique characteristics of the concept will allow its adaptation to virtually any site situation without sacrificing any residential amenities.

NEGATIVE ASPECTS

The lengthy study process which led to the maturing of the modular lotting concept dealt with the many contemporary problems that are inherent in conventional subdivision practises -- with the primary objective of alleviating, if not completely eliminating, any physical, social and economic adversities.

It should therefore not be surprising that no specific problems are attributed to the new scheme. Any negative aspects envisioned relative to the modular lotting concept are based upon the perception that future inhabitants of the 6-unit module "may" not co-operate in such endeavours.

Surely, the adage that "environment shapes and forms people" must discount any negative assumptions. The highly satisfying lifestyle that the inhabitants of the 6-unit module will become accustomed to will kindle a co-operative spirit whereby normal maintenance chores will be regarded as obligatory to one's neighbours rather than punitive or burdensome. The correctness of this theory was confirmed during the consultative process with residents of private road developments in other Ontario municipalities.

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Why then, do we have this dilemma of negative perception?

People generally do not understand the advantages of innovation. They suspect the worst. They cannot readily evaluate the results of innovative land use and development methods. When such proposals do go forward, approval agencies have no criteria, no research on which to judge for themselves because they are too busy keeping up with existing traditional plans and proposals. They have not done the necessary research and there is really no incentive for them to do so.

Even if the cost of repair of private roads were assumed by the City -- i.e. repaving and general upkeep, it would not entail a greater public expense than that associated with conventional subdivision development, because the sum-total of public and commonly-owned private road surfaces in the modular lot subdivision is less compared to the conventional system.

EEI

DANIEL B. DUTTON, B.Sc., M.T.C., P.Eng.
City Engineer
TELEPHONE 679-4925



ENGINEERING DEPARTMENT
300 DUFFELL AVENUE
P.O. BOX 5075
LONDON, ONT. N6A 4L9

IN REPLY PLEASE REFER TO:

OUR FILE NO. 154/S/11
ATTENTION: D. B. Dutton
TELEPHONE NO 519-679-4925

August 16, 1983

Mr. Wm. P. Taylor
Commissioner of Engineering
City of Mississauga
1 City Centre Drive
Mississauga, Ontario
L5B 1M2

Dear Sir:

Private Streets

With reference to your telephone inquiry, enclosed is a copy of the Municipal Council resolution on private streets. Also attached is a list of private streets in the City, together with a report from the Ministry of Municipal Affairs and Housing and other pertinent information.

Should you wish to view any of these locations, please advise me of the day and time that you will be arriving in London for this purpose so that appropriate arrangements can be made.

Yours truly,

D. B. Dutton, P. Eng.
City Engineer

DKS/cs

attachments

ENGINEERING WORKS & BLDG. DEPT.		
RECEIVED FILE		
AUG 19 1983		
To	Index	Date
M.P.T.		
D.B.D.		

c.c. given



DEPARTMENT OF THE CITY CLERK
300 DUFFERIN AVENUE, P.O. BOX 5035, LONDON, ONTARIO M5A 4L9

CITY ENGINEER'S DEPT

REFER TO B7C

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RECEIVED

JUL 8 1983

COPIES TO:

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July 6, 1983

Mr. K. L. Perry
Director of Planning and Development

I hereby certify that the Municipal Council, at its session held on July 4, 1983, resolved:

5. That, on the recommendation of the Director of Planning and Development and the City Engineer, the following Guidelines be adopted for Private Streets:

- (a) Council will not approve private streets to serve free-hold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except as indicated below. All developments of this type must be served by public streets designed to current standards and to the specification of the City Engineer.
- (b) Council will consider for approval private streets for residential and non-residential developments provided that the developments are under ownership of a Condominium Corporation, or Co-operative Corporation, under the relevant Provincial Act, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.
- (c) Council will consider, in exceptional situations, the approval of private streets in "common-law" co-operatives. Where the subdivision of land occurs by Committee of Adjustment consent, the administration will request that a condition be put on Title to make it clear that the street is private and will not be assumed for maintenance purposes by the City.
- (d) The City Engineer may consider some deviation from current City Standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc. (59.24.4) (5/15/PC)

P.C. MacKinnon for T.L.

P. C. McKinnon
City Clerk

PCM/gh

c.c. Jack E. Davis, 425 William Street, London, N6B 3E1
Urban Development Institute, P.O. Box 5099, London, N6A 4N8
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A. S. Dobronyi
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Policy Book

1666

K. L. Perry
Director of Planning & Development
1. F. Dutton
Director of Planning



200 Dufferin Avenue
P.O. Box 5035
London, Ontario N6A 4L9

IN REPLY PLEASE REFER TO

OUR FILE NO. _____

ATTENTION J. Tikalsky

TELEPHONE 679-4980

DEPARTMENT OF PLANNING & DEVELOPMENT
PLANNING DIVISION

May 9, 1983

Room 1006

CITY ENGINEER'S DEPT.

REFER TO DD

RECEIVED

MAY 10 1983

COPIES TO:

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OKS

Dear Mr. Sifton:

Re: City of London Proposed Guidelines for Private Streets

Last year the City Engineer and I raised certain concerns we had with private streets that were being created by Committee of Adjustment actions. We discussed this matter with you, and as a result of concerns U.D.I. expressed, we have reconsidered our original recommendation to the Planning Committee.

We now agree that in exceptional situations private streets may be acceptable that are not part of a Condominium or Co-operative Corporation. We do, however, feel the City has an obligation to ensure that future property owners are aware that the servicing is private and that the City has no responsibility for maintenance of the street or services. We will be proposing that a clause to that effect be registered on title of each parcel created by the Committee of Adjustment.

Enclosed is a draft of the approach which we intend to bring back to the Planning Committee. Before we do so, however, we would ask for your review and comment on this approach. I hope this revised approach will satisfy your earlier concerns.

We would be happy to meet with you to discuss any concerns you may have.

Yours truly,

K. L. Perry
Director of Planning and Development

JT/mat

cc D. Dutton ✓

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"Council will not approve private streets to serve freehold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except as indicated below. All developments of this type must be served by public streets designed to current standards and to the specification of the City Engineer.

Council will consider for approval private streets for residential and non-residential developments provided that the developments are under ownership of a Condominium Corporation, or Co-operative Corporation, under the relevant Provincial Act, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.

Council will consider, in exceptional situations, the approval of private streets in "common-law" co-operatives. Where the subdivision of land occurs by Committee of Adjustment consent, the administration will request that a condition be put on Title to make it clear that the street is private and will not be assumed for maintenance purposes by the City.

The City Engineer may consider some deviation from current City Standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc."

DRAFT

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Director of Planning and Development and the City Engineer
RECOMMENDATION, pursuant to Clause 3-11/11/LUDC/1982, the fol-
lowing Guidelines be adopted for Private Streets:

- 1) "Council will not approve private streets to serve free-
hold (individually owned) single detached, semi-detached,
duplex or rowhouse dwellings except as indicated below.
All developments of this type must be served by public
streets designed to current standards and to the specifi-
cation of the City Engineer."
- 2) Council will consider for approval private streets for
residential and non-residential developments provided that
the developments are under ownership of a Condominium Cor-
poration or Co-operative Corporation under the relevant
Provincial Act, and that the private streets are designed
to current standards as set out in the Site Planning Guide-
lines and to the specifications of the City Engineer.
- 3) Council will consider, in exceptional situations, the ap-
proval of private streets in "common-law" co-operatives.
Where the subdivision of land occurs by Committee of Ad-
justment consent, the administration will request that a
condition be put on title to make it clear that the street
is private and will not be assumed for maintenance pur-
poses by the City.
- 4) The City Engineer may consider some deviation from current
City Standards for public streets where warranted by a
specific development proposal such as estate lots, con-
strained site dimensions, infill developments, desire to
preserve topographical or vegetation features, etc."

BACKGROUND INFORMATION

At its meeting on May 31, 1982, the Land Use and Development
Committee took the following action:

"That the Director of Planning and Development's proposed
Guidelines for Private Streets be referred back to the
staff with the request that the guidelines be circulated
for input by various groups in the development industry,
and that a public meeting be held when the matter is re-
submitted to the Land Use and Development Committee for
consideration." (59.24.4) (3-11/11/LUDC)

In the above report, the City Engineer and I expressed our con-
cerns about private streets. A copy of the Report is attached.
At that time, we recommended that private streets be created
only by a registered Condominium Corporation.

Subsequently, we discussed the matter with representatives of
the local development industry. It was their position that
private streets could also be the responsibility of a legal
entity which was not a condominium under The Condominium Act.
We now agree that this type of "common law" co-operative may
also be appropriate.

After considerable discussion with the Legal Department, we feel
it is sufficient protection to the City to alert purchasers of
freehold lots on private streets of their obligation as in No. 13
of the above recommendation.

The Urban Development Institute has expressed their support for
the recommended approach (copy of letter attached). We have re-
ceived no other comments as a result of the notice of public
meeting, published in Civic Corner of the London Free Press,
1983.

JRT/mat
May 27, 1983

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Council will not approve private streets to serve freehold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except where the private street is owned on a common element by a registered Condominium Corporation. All other developments of these types must be served by public streets designed to current standards and to the specification of the City Engineer.

REVIEWED
Council will approve private streets for residential and non-residential provided that the developments are under one ownership by a Condominium Corporation, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.

The City Engineer may consider some deviation from current City standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc.

Background Information

For sometime, the City Administration has reviewed proposals for freehold developments on private streets which serve more than one dwelling or establishment in separate ownership. These private street proposals have been for residential low density developments. Following are some examples of this type of development.

1. Z-1430 - 251-253 Epworth Avenue, S/S, 251555 Projects Ltd.
No. of Lots - 11, Date approved July, 1975
 - The zoning by-law passed permitted 10 single family and 3 semi-detached courtyard houses.
 - Application to Committee of Adjustment in June, 1976, to reduce the total number to 11 and to eliminate the semi-detached units, was granted.
 - Council on November 1, 1976 exempted the lands from part lot control and approved "lotting".
 - A development agreement registered June 1975 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.
2. Z-2010 - Hunt Club Drive, Sifton Properties Limited
No. of Lots - 27, Date approved January, 1978
 - The zoning by-law passed permitted 27 single sideyard detached family dwellings.
 - Consent to sever for 22 zero lot line single family and 3 conventional single family "lots" was granted by Committee of Adjustment on August 21, 1978.
 - A development agreement registered April, 1978 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.
3. Z-2068 - 231 Windnor Avenue, G. R. Glatt
No. of Lots - 9, Date approved April, 1978
 - The zoning by-law passed permitted 8 single family and 1 semi-detached dwellings.
 - A development agreement registered July, 1978 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.
 - Consent to sever for 9 single family lots granted by the Committee of Adjustment October, 1978.
4. Z-2282 - N/S Windermere Road, opposite Corley Drive, Enod Holdings Ltd. - No. of Lots - 18, Date approved September, 1980
 - The zoning by-law passed permitted 18 single family dwellings.
 - A subdivision agreement registered August, 1981 was entered into.
 - The Ministry would not accept this proposed development of 18 lots on a private street, therefore, the developer dedicated the street to the City.
 - Maintenance of the private street to be the responsibility of the developer or joint owners.

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5. OZ-2409 - 1/2 Sady Street, south of Commissioners Road, Landar Dev. Ltd.
No. of Lots - 17 maximum, Date approved March, 1981

- Official Plan Amendment from O5 to D10 passed by Council September 1980.
- A zoning by-law permitting 19 units per hectare passed September 1980 and amended March, 1981 for 17 single family.
- Development agreement registered May, 1981. The applicant originally envisaged a condominium development on a private street. Changed to subdivision.
- The Ministry of Housing would not accept this proposed subdivision a private street.
- Subsequently, a Plan of Subdivision was placed upon the lands. Approved by Council September, 1981 and by OMB. October, 1981, not yet registered.
- Subdivision Agreement registered February, 1982.
- The street has been dedicated, although substandard, the City will assume and accept 15 m width with 1.5 m easements either side.

6. Z-2698 - S/S Between Rideau Gate and north branch of the Thames River,
R. Peever, No. of Lots - to be determined, Date approved

- L.U.D.C. recommended to Council April 26, 1982.
- The City will not assume the street.

PROBLEMS

A recent report prepared by the Ministry of Municipal Affairs and Housing points out some of the potential problems with private roads. Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. In this way, they may achieve the same standard of road service as public road residents without paying for the upgrading of the road to City standards. Further, they may not be able to achieve at a later date, the City standards due to physical constraints.

Financial

- private road residents generally are not taxed at any less rate than public road residents, even though their road access is less than the standard of a public road.
- landowners may have encountered administrative and financial problems in arranging adequate private road maintenance.
- residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard if it is going to qualify for their subsidy. If it is not or cannot be brought up to standard, no subsidy will be available.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy (if applicable) to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

which issue is important because a small locality may find that general public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibility. lu

It is our view that streets to serve freehold lots should either be private streets which are common elements of a registered Condominium Corporation or public streets dedicated by Plan of Subdivision. Although, the City does not have any responsibility for services on private property including private streets, we are concerned that the above problems could arise in the future.

These potential future problems can be avoided by either providing a public street in the first instance with normal City responsibility for the street or ownership under a Condominium Corporation which was expressly designed to deal with streets and other commonly owned elements.

JCT:mas
May 27, 1982 

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LONDON CHAPTER

P.O. BOX 5099, TERMINAL "A", LONDON, ONT. N6A 4M8 Tel. 519-471-0850

May 17, 1983

Department of Planning & Development
Planning Division
Corporation of the City of London
P. O. Box 5035
LONDON, Ont. N6A 4L9

ATTN: Mr. K. L. Perry
Director of Planning & Development

Dear Sir:

RE: City of London Proposed Guidelines for Private Streets

Further to your letter of May 9, 1983, the London Chapter of the Urban Development Institute and the London Home Builders Association have reviewed your Draft concerning private streets.

It is our understanding that these guidelines as proposed refer only to individually owned dwelling units, or individually owned business units. It is not intended that these guidelines will refer to such projects as rental townhouses, or multi-tenanted non-residential developments, rental apartment buildings, and so on, where ownership is related to the project or a percentage of the project, as opposed to the individual units within the project.

In other words, this policy is intended to refer to freehold residential and non-residential units within a project.

Based on this understanding of the purpose of the guidelines for private streets, both the London Chapter of the Urban Development Institute and the London Home Builders Association wish to go on record as supporting both the need for some form of control of private streets and your proposed guidelines.

Yours truly
URBAN DEVELOPMENT INSTITUTE-LONDON CHAPTER

W. Glen R. Sifton
W. Glen R. Sifton
President

LONDON HOME BUILDERS ASSOCIATION

Warren R. Wolfenden
Warren R. Wolfenden
President

DEPARTMENT OF
PLANNING AND DEVELOPMENT

FILED MAY 20 1983

FILED TO
SUBSEQUENT RELEASED

- ☐ FOR ACTION
- ☐ FOR INFORMATION
- ☐ FOR RECORD
- ☐ FILE
- ☐ BE
- ☐ OTHER

Ontario

Planning

Division

Toronto, Ontario
M7A 2K4

1 NNN

CITY CLERK No.

SUBJECT

DATE MAY 3 1982

REF.

Municipal Clerks
Planning Boards
Planning Consultants

Re: Private Roads - Planning Guidelines
for Municipalities

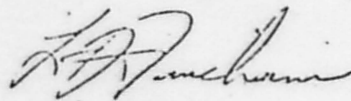
The ministry has now completed a review of the issues raised by development on private roads. Quite simply, our review has led us to discourage any development on existing and new private roads until municipalities have satisfied themselves and this ministry that all consequences of this development have been considered.

The enclosed guidelines describe what the consequences of private roads can be. Equally important, they set out questions on the land use planning, financial and legal issues raised by private roads that should be answered by the municipal review. Early contact with the Community Planning Advisory Branch and the appropriate Community Planning Review Branch of the ministry can ensure that only questions relevant to local circumstances are included in the review.

The issue of private roads is inseparable from that of conversion of seasonal residences to permanent use. Accordingly, considering the enclosed guidelines together with the Official Plan and Zoning Guidelines for Cottage Areas will help to ensure a coordinated approach to these issues.

If after reading the guidelines, you have any written comments on them you would like to pass along, I would be pleased to consider them.

Yours truly,



L.J. Fincham
Acting Director
Operations Control Branch

DEPARTMENT OF
PLANNING AND DEVELOPMENT

RECEIVED MAY 4 1982

FILE NO. _____
BY _____
SUBJECT REFERENCE

☐ FOR ACTION
☐ FOR INFORMATION
☐ FOR REPLY
☐ FILE

1.0 INTRODUCTION

Recently there has been increased interest in development with road access other than publicly owned and/or maintained roads.

There are many potential local and provincial problems where private roads provide access to development. Accordingly, the ministry discourages any development on existing and new private roads in the absence of

- . a comprehensive study of the planning, financial and legal implications for the municipality, and
- . approved official plan policies on this type of access based on that comprehensive study.

These guidelines are intended to help municipalities develop a position on private road development by identifying potential private road problems and the kind of information that should be collected and examined for the municipal study.

For the purposes of these guidelines, a private road is any road not available for use by the general public since it is privately owned and maintained. This means any road not publicly owned and/or maintained.

Contact with the ministry's Community Planning Advisory Branch and Community Planning Review Branch before the study begins is highly recommended. Early discussion with these branches will confirm the specific information needed for the study based on local circumstances. These discussions can save a municipality from unnecessary work and expense in their study by tailoring the research required to local information sources and conditions. The completed study should also be discussed with these branches to resolve any ministry concerns before planning changes are made. Funding for the review may be available through the Community Planning Advisory Branch.

Most of the information needed for the study should exist in municipal records and can be used effectively by local staff. Useful sources include existing land use maps, building permit records, assessment rolls and the knowledge of the roads superintendent and solicitor.

2.0 PRIVATE ROADS PROBLEMS

2.1 Financial

Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. This way, they will achieve the same standard of road service as public road residents. There may be many reasons for this:

- private road residents generally are not taxed at any less rate than public road residents even though their road access is less than the standard of a public road,
- landowners may have encountered administrative and financial problems in arranging adequate private road maintenance,
- seasonal residents may desire year round access to permit them year round occupancy, and
- residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and

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if it is going to qualify for their subsidy. Although there is no legal requirement for the municipality to pay for this improvement, pressure can be applied by private road users for the municipality to do this. These road improvement costs, if paid by the municipality, can upset municipal budgeting. Attempts to have private road users pay for the improvements may well be unsuccessful.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy, to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

These two costs, if paid by the municipality, may not be offset by increased provincial subsidy and local tax revenue. Some municipalities believe that private road development is less expensive to them. They may find in the long term that this is not so. Some municipalities cannot bear the costs related to accepting the ownership and responsibility for the maintenance of private roads without financial jeopardy.

2.2 Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a municipality may find that general public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities.

Reviewing the status of privately owned roads and any actions by the owners and municipality which may affect the legal

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status of these roads may confirm potential problems of municipal liability. Generally, public roads which have been assumed by the municipality are improved and maintained at public expense. The municipality may be liable for damages caused by lack of maintenance even though it may not have clear title to these roads.

2.3 Land Use Planning

Private road problems are described more easily in financial and legal terms rather than in planning terms. However, the planning framework (i.e. official plan and zoning by-law coverage) provides an established way of making a formal municipal position and complementary controls over development on private roads using public input.

Some aspects of private roads do pose land use planning problems. Private roads are largely associated with seasonal residential uses in recreational areas. Demand for municipal ownership and maintenance of these roads is low where the development serviced is, and remains, seasonal. However, conversion to permanent residential use increases demands for higher levels of services, similar to those in other parts of the community. The municipality should anticipate areas of conversion and establish appropriate policies and controls.

Without addressing the land use implications of private roads and developing a corresponding policy, the chances of successfully enforcing a municipal position and controlling the adverse effects of private roads are slim. While an official plan's land use distribution may be sound, without private roads policies the plan would be an incomplete base for municipal action. Once established, these policies can be followed up in a number of ways. Seasonal zoning is one of the planning tools used in trying to control the effects of private roads. While the legal basis for this zoning is sound, the ministry

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realizes the difficulties that can be involved in effectively enforcing these by-laws. Further, official plan policies on capital works prohibiting the provision of municipal services on private roads can help municipalities deal with pressure to provide services before the consequences of this are explored. The Planning Act requirement that no public work be undertaken for any purpose not conforming to the official plan lends weight to these policies.

3.0 COMPONENTS OF THE COMPREHENSIVE STUDY

The local study is intended to help the municipality assess its private roads situation and, if necessary, develop an official plan policy to deal with it. The questions which this guideline suggests are designed to show whether any of the problems described earlier exist or could result from the use of private roads as access to development.

Based on the comprehensive study, a municipality may decide not to allow development on private roads at all. Municipalities deciding to allow such development should assess the effectiveness of the controls and determine whether changes are required.

The study should address these three private roads issues:

- . land use planning
- . financial
- . legal

The conclusions of the study should clearly

- . confirm whether there are or may be problems with private roads in the municipality or not

- (1111)
- . identify the nature, extent and effect of those problems
 - . indicate the municipal position on private roads based on the findings of the study, and
 - . identify alternate official plan policies, zoning approaches and any other relevant regulatory tools needed to implement the municipal position on private roads.

The study should contain answers to the questions set out below unless some of them are clearly not pertinent to the municipality. The study can go beyond these questions if considered useful.

3.1 Land Use Planning

- . Are there private roads in the municipality? Where are they? A map showing private and public roads separately should be prepared at a scale allowing measurement of their lengths. What determines the categorizing of a road as private on the map?
- . Choose a representative period for the study (e.g. the last five years).

Is this relevant?

How many ~~seasonal dwellings, permanent dwellings and vacant lots~~ are there on private roads? How many lots used for some other purpose exist on private roads? What percentage of private road frontage is vacant or used for something other than residential use (separate figures)? How many severances have been granted on private roads?

- . How many building permits have been issued in the municipality in the study period? Of this total, how many permits have been issued for lots with private road access? Is the rate of building on lands with private road access increasing?

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- . About how many residential units on private roads have been converted from seasonal to permanent use in the study period? Are these conversions concentrated or scattered throughout the municipality?
- . Has the maintenance of any private road(s) been assumed by by-law in the study period? Does the municipality intend to assume by by-law maintenance of any private road(s) in the foreseeable future? Please indicate the approximate length and location on the map prepared. Has the municipality had any requests to assume the maintenance of private road(s) in the study period? What services, if any, does the municipality provide to private road(s) now?
- . Do the municipality's official plan and zoning by-law explicitly address private roads and conversion from seasonal to permanent residential use? If so, how?

Answers to these questions will describe the existing situation regarding private roads. They will also indicate if private road development forms a significant and growing amount of the municipality's growth. Reviewing the existing planning controls together with the trend in private road development will show whether those controls are adequate or should be changed.

3.2 Financial

- . What would be the approximate, current cost to bring each private road up to minimum Ministry of Transportation and Communications subsidy standard? How much would the associated costs of surveys, land acquisition, deed preparation and any other costs be?
- . Who would pay these costs if these roads become public and why? If the municipality is going to pay these costs, how

are they going to be recovered? (The ministry's Field Services Branch, whose offices are listed at the end of this publication, are prepared to report the impact of a specific expense on a municipality's financial position. Such reports can be made available to municipalities who request them and can outline the cost associated with a particular work).

- . What would be the anticipated municipal costs per year to maintain a kilometre of road at Ministry of Transportation and Communications subsidy standard?
- . How would the municipality pay for the maintenance costs of the larger of the following:
 - private roads for which the municipality intends to accept dedication and maintenance responsibility in the foreseeable future, or
 - private roads which legally may be found to be public and to have been assumed by the municipality as a result of the provision of municipal services.
- . If the municipality intends to provide services on private roads but not to assume those roads, how would the municipality pay for these services and would any legal problems be created?

3.3 Legal

- . Do the actions of private road owners and the municipality create any legal grounds for claims that a private road has become a public road? (In addition to answering this question, the municipal solicitor may have relevant comments on the conclusions of the review).

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3.4 The Conclusion of the Study

- . Has the study confirmed the existence or potential for any of the problems described earlier? If so, what problem or combination of problems might there be?
- . Based on the findings of the study, what should be the municipal position on private roads as a means of access to development?
- . If the official plan policies, zoning by-laws or other available regulatory means do not ensure that the municipal position can be achieved, what specific changes are required?

The last question of the study is the first step toward developing effective controls recognizing the variety of problems private road access can cause. To help you answer this question the Community Planning Advisory Branch and the Community Planning Review Branch are prepared to discuss the private roads review and possible planning controls. Early and frequent contact with these branches can ensure that the study is done with a minimum of problems and maximum benefit. Municipalities are encouraged to use this resource to assist them.

This study exercise and follow-up can result in reasonable controls over private roads, acceptable to both the municipality and the province.

The Community Planning Advisory Branch has offices at the following locations:

Central Region
2nd Floor
47 Sheppard Avenue East
Willowdale, Ontario M2N 2Z8
Telephone: (416) 224-7635
Zenith 52650

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South East Region
3rd Floor
244 Rideau Street
Ottawa, Ontario K1H 5Y3
Telephone: (613) 566-3801
Zenith 52650

North East Region
1191 Lansing Avenue
Sudbury, Ontario P3A 4C4
Telephone: (705) 560-0120
Toll free 1-800-461-1193

North West Region
435 James Street South
Thunder Bay, Ontario P7C 5G6
Telephone: (807) 475-1651
Zenith 52650

South West Region
7th Floor
495 Richmond Street
London, Ontario N6A 5A9
Telephone: (519) 673-1611
Toll free 1-800-265-4736

The Community Planning Review Branches have offices at the following locations:

Community Planning Review Branch
North and East
7th Floor
56 Wellesley Street West
Toronto, Ontario M7A 2K4
Telephone: (416) 965-6418

Community Planning Review Branch
Central and Southwest
8th Floor
56 Wellesley Street West
Toronto, Ontario M7A 2K4
Telephone: (416) 965-6418

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The Field Services Branch of the ministry, which can report on the impact of a specific expense on a municipality's financial position, has offices at the following locations:

Cambridge Office
150 Main Street
Cambridge, Ontario N1R 6P6
Telephone: (519) 622-1500

Guelph Office
147 Wyndham Street North
Guelph, Ontario N1H 4E9
Telephone: (519) 836-2531

Kingston Office
1035 Princess Street
Kingston, Ontario K7L 5T3
Telephone: (613) 547-2203

London Office
7th Floor
495 Richmond Street
London, Ontario N6A 5A9
Telephone: (519) 438-7255

North Bay Office
347 Sherbrooke Street
North Bay, Ontario P1B 2C1
Telephone: (705) 476-4300

Orillia Office
158 Matchedash Street North
Orillia, Ontario L3V 4T4
Telephone: (705) 325-6144

Oshawa Office
2nd Floor
74 Simcoe Street South
Oshawa, Ontario L1H 4G6
Telephone: (416) 571-1515

Ottawa Office
244 Rideau Street
Ottawa, Ontario K1H 5T3
Telephone: (613) 566-3711

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Sudbury Office
430 Notre Dame Avenue
Sudbury, Ontario P3E 5K7
Telephone: (705) 675-4343

Thunder Bay Office
P.O. Box 5000
435 James Street South
Thunder Bay, Ontario P7C 5G6
Telephone: (807) 475-1621

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Background Information

Present Policy

Most of the presently existing private streets are created by means of Condominium developments.

1. We do provide garbage collection in most of the cases
2. We do not clear snow even if they are prepared to pay the costs
3. We do not repair those streets even if they are prepared to pay the costs
4. We do not look after the underground utilities
5. Public Utilities Commission

- watermain and water service connections are maintained by the owners, there may be individual meters for units
- electrical services are on easements and the P.U.C. maintains them in all cases

What constitutes assumption of a street:

- normally a by-law is passed by the municipal council
- assumption of underground services and continuous maintenance of underground services (not necessarily)
- continuous use by the public (20 yrs) *What about laneways?*
- providing maintenance from public funds
 - snow clearing
 - repairing, maintenance etc.

What can force a municipality into assuming a private street

- public pressure to the elected officials
- legal action: people might take the City to court (Windermere Court and Chelsey Court/Rudy Street being dedicated public highways, court action against City is most likely to succeed)

-extension of a private street for public purposes, City's own initiative.

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What action may be taken by the City to avoid any possible assumption by the City of private roads on dedicated road allowances.

-include clause(s) in agreements forcing some sort of Co-op or home owners association to look after all aspects of maintenance of these private streets (snow ploughing, repairs whatever) — Not in agreement — legal left it.
— Road could be substandard.
-attempt to close these private roads as soon as possible and include a covenant(s) in the joint maintenance agreement or in some agreement so that people living on these streets are aware of the circumstances and don't object to the closing of these streets — Not in agreement.

-do not provide any services from public funds
PROBLEMS — We could not enforce parking regulations on street [MUNICIPAL REGULATION]
became not assume
— Accident could be investigated perhaps. — Dedicated as a Public Highway.
Recommended Policy — Problem with packers using road as a parking area.
— What about fire dept with unrestricted parking.
If lots are not more than 10-12' and the geometry of the street

is o.k., permit a private street on a dedicated public road allowance with a minimum of 50' R.O.W. Minimum pavement width is not to be less than 22'. The City prepares a layout of all utilities on the R.O.W.

If care is taken in the layout and design of these streets, it may not be the end of the world to assume them if we are forced into it.

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paul theil associates limited
consulting engineers

700 BALMORAL DRIVE, BRAMALEA, ONTARIO L6T 1X2 (416) 792-2215

September 28, 1983

First City Development Corp. Ltd.
99 Avenue Road, 10th Floor
Toronto, Ontario
M5R 2G6

Attention: Mr. D. Strachan
Vice-President, Land Department

RE: LISGAR

Dear Sirs:

We forward herewith a summary of cost comparison between a conventional lotting scheme and a modular lotting scheme, using the three pipe servicing method with a 2 year storm design for both schemes.

The cost analysis was carried out last January on a 145 acres sample area. The layout and road pattern for the modular system has changed since then, but the cost evaluation is still valid. Four copies of the sample modular area are enclosed for your reference.

The conventional scheme costs \$8,000 per unit compared with \$7,300 per unit for the modular scheme. These costs are base construction costs and do not include for hydro, streetlighting, engineering or contingencies.

We trust this information is satisfactory for your needs.

Yours very truly,

PAUL THEIL ASSOCIATES LIMITED

David G. Dodwell
Senior Associate

DGD:jh
7908

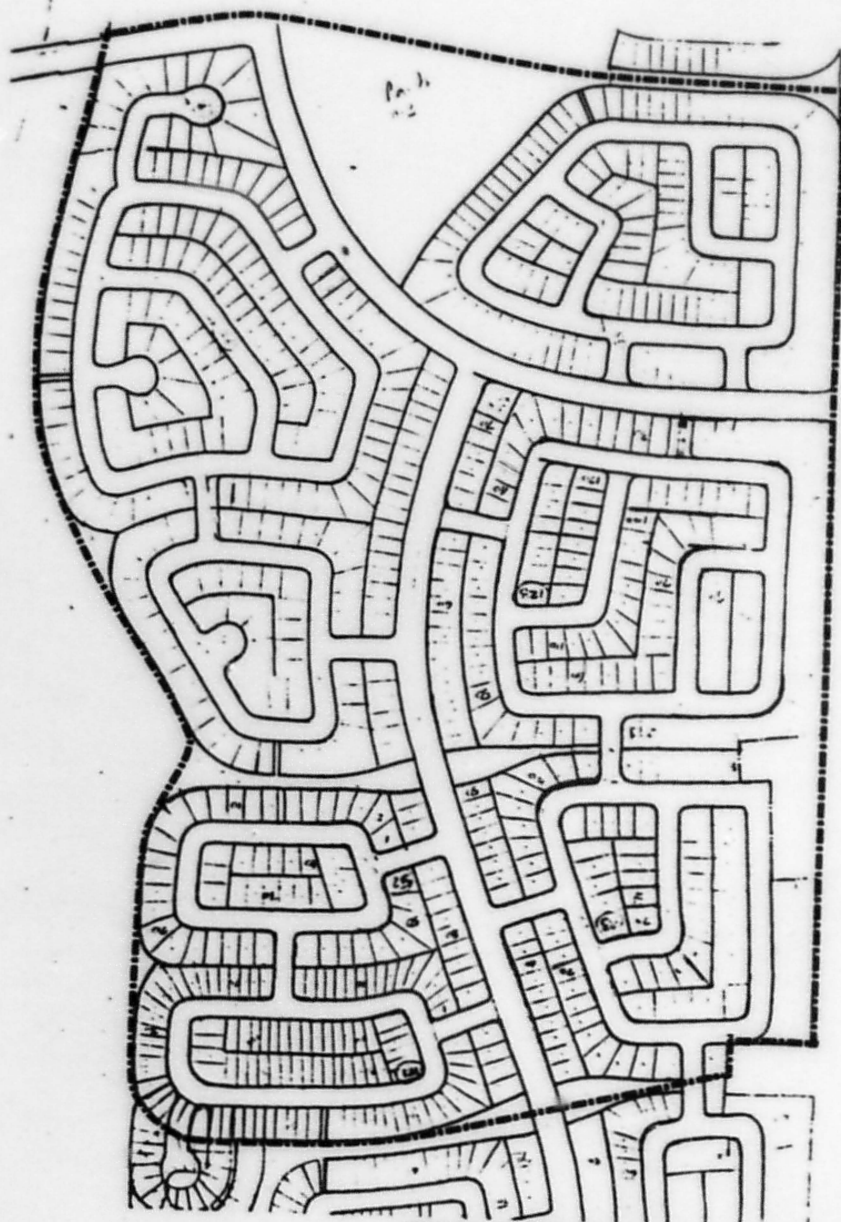
LISGAR

7908

Cost comparison between a conventional lotting scheme and a modular lotting scheme, both with three pipe servicing and 2 year storm design.

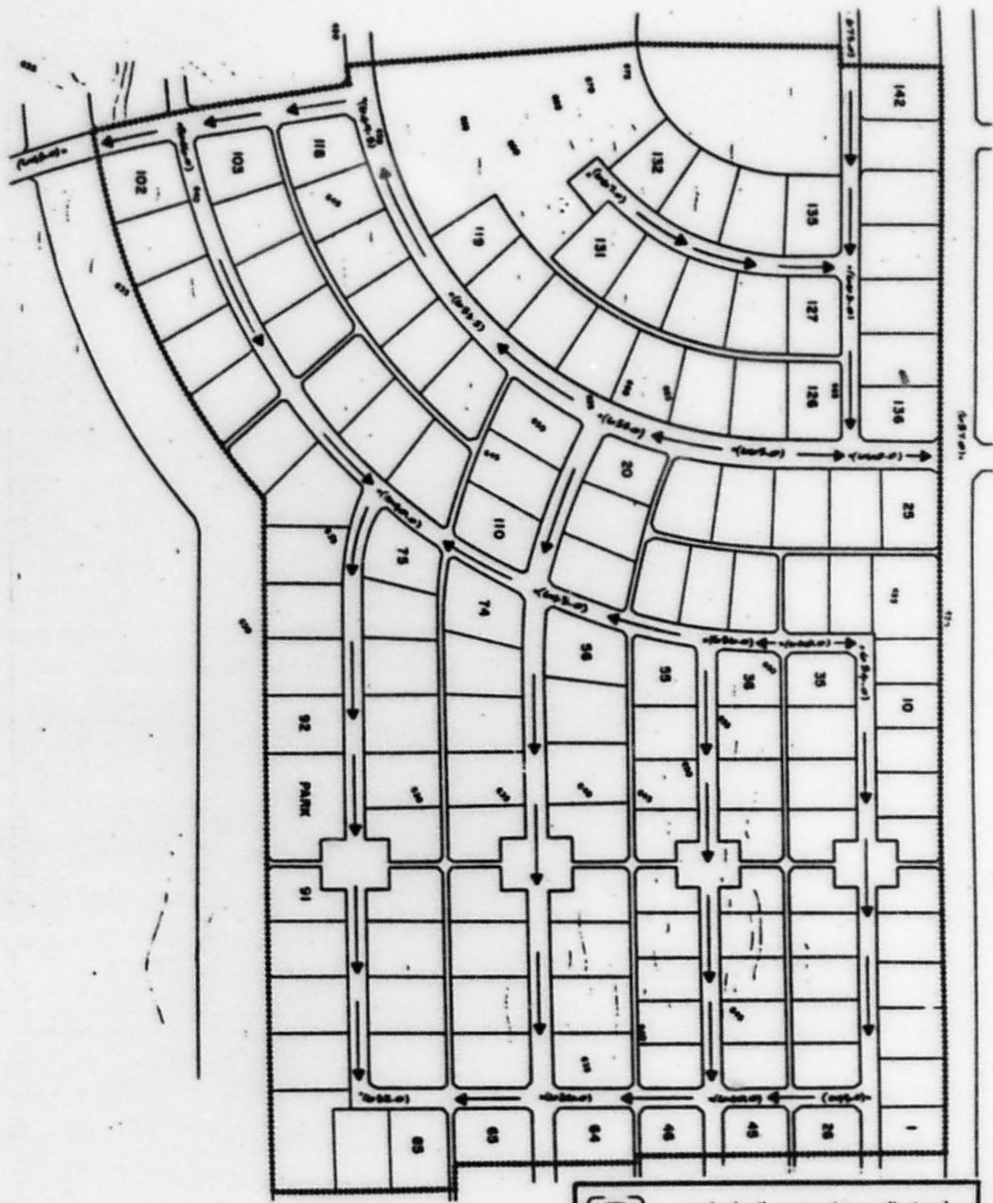
<u>LAND</u>	<u>CONVENTIONAL</u>	<u>MODULAR</u>
Acres	144.5 ac.	144.5 ac.
Units	817	837
Roads	29,200 ft.	15,200 ft.
Laneways	-	20,500 ft.
<u>SERVICING COSTS</u>		
Sanitary & F.D.C.	\$1,303,000	\$796,000
Storm	1,173,000	716,000
Water	912,000	557,000
Roadworks	3,128,500	2,045,000
Laneways	-	1,959,000
TOTAL COST:	\$6,516,500	\$6,073,000
COST PER UNIT:	\$7,976.13	\$7,255.68
Say	\$8,000.00	Say \$7,300.00

1 cccc



R	paul theil associates limited consulting engineers 700 Balmoral Drive, Bramalea, Ontario
	LISGAR CONVENTIONAL SYSTEM.
DATE	JAN. 1989
SCALE	N.T.S.
PROJECT NO.	7408

14444



	paul theil associates limited	
	consulting engineers 700 Balmoral Drive, Brampton, Ontario	
LISGAR		
INNOVATIVE		
SYSTEM.		
DATE: Jan. 1985		
SCALE: N.T.S.		
PROJECT NO. 7405		

1 HHHH



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RECEIVED OCT 0 7 1983

paul theil associates limited
consulting engineers

700 BALMORAL DRIVE, BRAMALEA, ONTARIO L6T 1X2 (416) 792-2215

September 30, 1983

First City Development Corp. Ltd.
99 Avenue Road, 10th Floor
Toronto, Ontario
MSR 2G6

Attention: Mr. D. Strachan
Vice-President, Land Department

RE: LISGAR

Dear Sirs:

We have, as requested, prepared the attached cost comparison of maintenance costs between the sample area of conventional and modular lotting, as defined in our letter of September 28, 1983.

We have obtained the actual maintenance cost expenditures for roadways for 1982 in the City of Mississauga and attach a copy for your reference. Mississauga, however, do not relate their maintenance costs to road mileage, since most of the work is done on a contract hourly basis. We have, therefore, obtained the City of Brampton maintenance expenditures for the period from 1975 to 1981, copy attached, which relates to mileage distances. We have used these figures to determine costs per foot of road after updating the 1981 costs to 1983 rates.

Yours very truly,

PAUL THEIL ASSOCIATES LIMITED

David G. Dodwell
Senior Associate

DGD:jh
7908
Encl.

P.S. Attached also is a copy of the cost of resurfacing private laneways, as requested.

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LISGAR

City Annual Maintenance Cost Comparison between the Conventional and Modular Lot Systems

		<u>Conventional</u>	<u>Modular</u>
Length of Municipal Roads		29,200 L.F.	15,200 L.F.
<u>Maintenance Item</u>	<u>Cost per Ft. (1983)</u>		
1. Cleaning of Catchbasins, curb & gutter & storm sewers	0.115	3,358.00	1,748.00
2. Patching & spray patching	0.206	6,015.20	3,131.20
3. Sweeping, Flushing & Cleaning	0.123	3,591.60	1,869.60
4. Resurfacing	0.175	5,110.00	2,660.00
5. Snow Flowing & Removal	0.115	3,358.00	1,748.00
6. Sanding and Salting	0.181	5,285.20	2,751.20
7. Winter Standby	0.109	3,182.80	1,656.80
8. Safety Devices, Signs, Guiderails, etc.	0.204	5,956.80	3,100.80
9. Miscellaneous	0.073	2,131.60	1,109.60
10. Maintenance Overhead	0.139	4,058.80	2,112.80
TOTALS: \$1.44		\$42,048.00	\$21,888.00
<u>Cost Per Mile</u> = \$1.44 X 5,280 = \$7,600.00			
Cost Savings to City on Maintenance			\$20,160.00
Say			\$20,000.00

MAINTENANCE URBAN/RURAL
THE CORPORATION OF THE CITY OF MISSISSAUGA

MAINTENANCE EXPENDITURE AND SUBSIDY REPORT
FOR PERIOD ENDING December 31, 1982

PROJECT	ESTIMATED FOR YEAR		ACTUAL TO DATE	
	Expenditure	Subsidy	Expenditure	Subsidy
BRIDGES & CULVERTS				
Bridges and Culverts @ 56%	318,800	226,400	332,347	186,114
ROADSIDE MAINTENANCE				
1 Grass Mowing & Weed Spraying			327,304	
2 Brushing, Tree Trimming & Removal			217,559	
3 Ditching *				
4 Catch Basins, Curb & Gutter			1,008,507	
Cleaning Storm Sewers			279,683	
5 Debris & Litter Pick-up				
3 Total Roadside Maintenance	1,477,100	818,900	1,833,053	916,527
HARDTOP MAINTENANCE				
-1 Patching & Spray Patching			902,883	
-2 Sweeping, Flushing, Cleaning			399,720	
-3 Shoulder Maintenance - Grading				
Patching, Washouts, Dust Layer			211,937	
-4 Resurfacing *			921,188	
C Total Hardtop Maintenance	2,096,300	1,082,900	2,435,728	1,217,864
LOOSE TOP MAINTENANCE				
-1 Patching & Washouts				
-2 Grading & Scarifying			2,699	
-3 Dust Layer			6,498	
-4 Prime or Priming			118,126	
-5 Gravel Resurfacing *				
D Total Loose Top Maintenance	113,800	66,800	127,323	63,662
WINTER CONTROL				
-1 Snow Plowing & Removal			1,249,575	
-2 Sanding & Salting			881,766	
-3 Snow Fence, Culvert Thawing Etc.			128,290	
-4 Winter Standby *			638,582	
E Total Winter Control	2,965,100	1,457,800	2,898,213	1,449,107
SAFETY DEVICES				
F Safety Devices, Signs, guiderails	844,800	458,700	848,353	424,177
Rail road Maintenance				
MISCELLANEOUS				
G Total for Miscellaneous	35,000	20,000	337,958	168,979
SUB-TOTAL (A to G)	7,851,600	4,231,500	8,812,975	4,426,430
OVERHEAD				
H Total Maintenance Overhead *			616,908	308,454
TOTAL (TO PAGE 1)	7,851,600	4,231,500	9,429,883	4,734,884

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From 1982 Update.

CITY OF BIRMINGHAM

MAINTENANCE EXPENDITURES

CATEGORIES & ACTIVITIES		1975	1976	1977	1978	1979	1980	1981
BRIDGES & CULVERTS								
A	Bridges & Culverts	28,344	89,231	106,565	32,668	91,09	23,875	13,814
ROADSIDE MAINTENANCE								
B-1	Grass Mowing & Weed Spraying	27,312	36,539	30,208	35,577	26,423	102,389	92,28
B-2	Brushing, Tree Trimming & Removal	16,509	20,153	102,387	78,603	102,118	95,196	95,025
B-3	Ditching	42,781	57,413	94,462	109,504	115,482	138,072	178,135
B-4	Catch Basins, Curb & Gutter Cleaning Storm Sewers	42,631	63,039	78,473	86,578	116,294	106,208	178,10
B-5	Debris & Litter Pick-up	94,251	99,761	125,438	133,829	187,648	160,763	123,031
B	Total Roadside Maintenance	223,484	276,905	430,968	444,091	547,965	602,628	666,590
HARD TOP MAINTENANCE								
C-1	Patching & Spray Patching	148,708	222,093	239,370	274,563	368,023	304,630	318,220
C-2	Sweeping, Flushing, Cleaning	100,242	108,665	155,878	170,796	182,709	164,195	191,214
C-3	Shoulder Maintenance - Grading Patching, Washouts, Dust Layer	5,325	9,450	12,609	14,570	12,010	9,042	17,488
C-4	Resurfacing	187,148	210,609	255,430	218,555	216,203	220,093	271,533
C	Total Hard Top Maintenance	441,423	550,817	663,287	678,284	778,945	697,960	798,455
LOOSE TOP MAINTENANCE								
D-1	Patching & Washouts	13,882	42,547	40,853	53,387	31,457	28,894	9,813
D-2	Grading & Scarifying	40,803	37,434	60,145	68,631	53,608	64,443	59,002
D-3	Dust Layer	33,898	30,140	31,395	36,158	12,392	25,280	23,062
D-4	Prime or Priming	—	—	—	—	—	—	—
D-5	Gravel Resurfacing	83,973	103,330	105,517	107,658	117,624	122,658	92,690
D	Total Loose Top Maintenance	172,356	213,451	237,910	265,834	215,081	241,275	184,567
WINTER CONTROL								
E-1	Snow Plowing & Removal	156,301	279,519	372,365	394,233	335,039	177,141	177,491
E-2	Sanding & Salting	126,069	182,815	198,633	329,983	314,212	294,476	279,567
E-3	Snow Fence, Culvert Thawing Etc.	24,045	33,855	53,104	42,893	108,407	119,538	66,327
E-4	Winter Standby	—	—	52,075	43,987	64,202	—	168,101
E	Total Winter Control	306,415	496,189	676,177	811,096	821,860	591,155	691,691
SAFETY DEVICES								
F	Safety Devices, Signs, Guide Rails, Railroad Maintenance	128,414	154,579	227,699	253,806	217,475	320,324	315,747
MISCELLANEOUS								
G	Total Miscellaneous	132,298	196,948	157,553	141,438	149,115	101,593	113,490
SUB TOTAL (A To G)		1,432,736	1,948,120	2,500,598	2,627,217	2,739,554	2,578,810	2,784,364
OVERHEAD								
H	Total Maintenance Overhead	100,292	136,368	175,011	183,905	191,769	200,641	215,736
TOTAL		1,533,028	2,084,488	2,675,609	2,811,122	2,931,323	2,779,451	2,997,711
I Mileage Totals		239-9	268-0	306-25	311-7	318-3	323-0	329-5

* Including 278,479 for fringe benefits (31% of 898,322) in 1980.
Including 297,609 for fringe benefits (31% of 960,028) in 1981.

12222

LISGAR

7908
September 30, 1983

Private Road System

Cost of road resurfacing in 1983 dollars

1. Cleaning of existing surface	400 s.y. @ 0.10 s.y.	400.00
2. Raise M.H. and C.B. to new grade	3 @ 150.00	450.00
3. Application of tack coat	400 s.y. @ 0.20 s.y.	800.00
4. Padding of road to reshape crown and fill settled areas	L.S.	350.00
5. Supply and place 1" H.L.3 overlay	400 s.y. @ 4.50	1,800.00
Contingencies		3,800.00
		380.00
		\$4,180.00
	Say	\$4,200.00
Cost per Unit		\$ 700.00

B



City of Mississauga

MEMORANDUM

Files: 11 141 00039
16 111 76137
11 211 00025

2

To	Chairman and Members of the	From	Mr. William P. Taylor, Commissioner
Dept.	Public Works Committee	Dept.	Engineering and Works
DATE		OCT 7 1983	
FILE NO.		T-76042 F0207 C0412	
CITY OF MISSISSAUGA		P. W. DATE OCT 20 1983	
		October 5, 1983	

SUBJECT: Naming of a street relative to the extension of Matheson Boulevard easterly to Renforth Drive together with the procedure for naming streets within the City of Mississauga in general.

ORIGIN: Engineering and Works Department.

COMMENTS: Council, at its meeting on August 17, 1983, considered our report of July 19, 1983, concerning the naming of Matheson Boulevard extension easterly to Renforth Drive and passed the following recommendation:

"1077-83 That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration."

In this connection I am therefore resubmitting our report of July 19, 1983, for the consideration of the Committee. We are also enclosing our March 31, 1983, report. These recommendations were adopted by Council on May 9, 1983.

For the information of Committee the following is an extract from the Minutes of the August 15, 1983, General Committee meeting pertaining to this item:

"16. Mayor McCallion expressed concern about this recommendation since that portion to be named Satellite is in fact an extension of Matheson Boulevard east of Dixie Road and may cause confusion not only for the public but emergency services. Mayor McCallion recommended that this matter be referred to the Public Works Committee for further consideration. This motion was voted on and carried."

This concern was addressed in our March 31st report.

Also, at the Council meeting of August 17, 1983, we were requested to report to Public Works Committee on the procedure for naming streets in general within the City of Mississauga. The procedure for the naming of streets varies dependent upon the origin of the

..2

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Chairman and Members of the
Public Works Committee
October 5, 1983
Page 2

SUBJECT: - Naming of street ---

COMMENTS - cont'd. street requiring naming, however, can generally be broken down into three categories:

1. New streets created by a Plan of Subdivision.
2. Extensions of existing streets.
3. Other requests.

We will attempt to address each of these categories individually.

1. New streets created by a Plan of Subdivision -

This category of street naming constitutes by far the largest number of requests. Typically, the names are chosen by the Developer or his Consultant and are often consistent with the theme of the development. These names are submitted to the Commissioner of Engineering and Works for approval. All names approved by the Commissioner are then referred to the Region of Peel Planning Department who in turn circulate the proposed names to a variety of Agencies including all Emergency Services for their comment on the acceptability of the proposed name. Upon a favourable response the names are then placed on the City of Mississauga Reserve Street Name List and the Region of Peel Reserve Street Name Index for the exclusive use of the applicant and this reservation is valid for a three-year period after which, if the applicant has not used same, they are removed from the Reserve Lists. The names are reviewed as to acceptability on a Region wide basis. Approved street names are required as a condition outlined in the Consolidated Report for draft plan approval and the street names come into effect upon the registration of the Plan of Subdivision.

2. Extensions of existing streets -

This is rather a simple matter whereby means of a Plan of Subdivision or Land Division streets are extended and they would be named the same name as that of the existing street. Street names such as this come into force (other than subdivisions) with the passing of the appropriate by-law by Council.

3. Other requests -

Other requests for street naming would be an existing confliction with a street name or where the residents request for one reason or another that the street name be changed. These matters are reviewed by this office and are referred to the Ward Councillor for comments and quite often a Public Meeting is held or a petition is requested from all of the Owners on the street. Again, these names are processed through the City and the Region of Peel in the usual manner and come into force when the appropriate by-law is passed by Council.

Chairman and Members of the
Public Works Committee
October 5, 1983
Page 3

28

SUBJECT: - Naming of street ---

- RECOMMENDATIONS:
1. That the report of the Commissioner of Engineering and Works dated October 5, 1983, with respect to the street naming procedure in the City of Mississauga be received.
 2. The the Public Works Committee recommend a name for the extension of Matheson Boulevard easterly to Renforth Drive after considering our reports of March 31, 1983, and July 19, 1983.

AEM
AEM:dw
Encls.

William P. Taylor
William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.

c.c. Mr. E. M. Halliday

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CITY OF MISSISSAUGA

MEMORANDUM

To Mayor and Members of General Committee From Mr. William P. Taylor, Commissioner
Dept. Engineering and Works

July 19, 1983

- SUBJECT: Naming of a street relating to the extension of Matheson Boulevard to Renforth Drive.
- ORIGIN: Engineering and Works Department.
- COMMENTS: General Committee at its meeting of May 4, 1983 considered a report relating to the above noted matter and recommended the following.
- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the re-aligned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.
 - (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
 - (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

With respect to the selection of a name for the proposed extension please note the following.

The name SATELLITE has been proposed by York Hanover Development Ltd. for the portion of this roadway contained within their development (T-76042R). This name meets with the approval of both this office and the Region of Peel with regard to conflicts and/or duplications. The proposed name has been reviewed with the Ward Council F. McKechnie who has no objections to its use.

July 19, 1983

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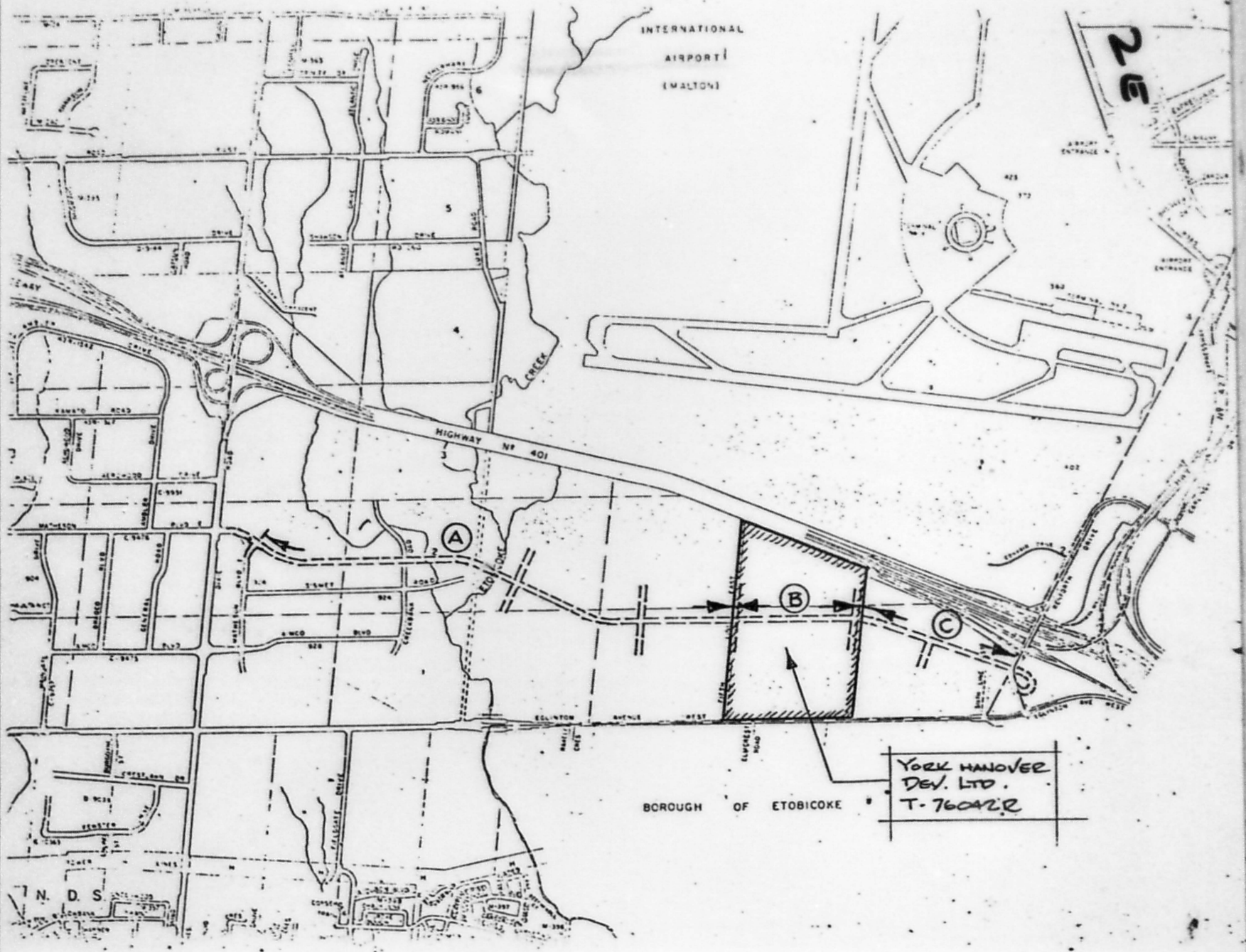
Mayor and Members of General Committee

- RECOMMENDATIONS:
- (a) That the name SATELLITE be approved for the portion of the above noted extension contained within the York Hanover Development Ltd. site - T-76042R (Part B on attached sketch).
 - (b) That as the remaining portions of the above noted extension are established as public highway they be named SATELLITE (Parts A & C on attached sketch).

William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.

PJD/st
Attach.

c.c. Mr. E.M. Halliday
Councillor F. McKechnie





MEMORANDUM

11 121 00036
12 111 00014
11 141 00039

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Director and Members of the
Public Works Committee
Dept.

From Mr. William P. Taylor, Commissioner
Dept. Engineering and Works

March 31, 1983

SUBJECT: Naming of a street relating to the extension of Matheson Boulevard to Renforth Drive.

ORIGIN: Engineering and Works Department.

COMMENTS: Matheson Boulevard, as it currently exists, runs from Hurontario Street easterly to Dixie Road, thence easterly and southerly to a point approximately 1,000 ft. north of Eglinton Avenue. This roadway will ultimately connect to Eglinton Avenue when the draft industrial plan of subdivision located east of Dixie Road between Aimco Boulevard and Eglinton Avenue is registered and serviced. It is proposed as part of the Airport South Secondary Plan to extend the east/west portion of Matheson Boulevard easterly to Renforth Drive and connect to Renforth Drive via a grade separated interchange. This extension would be built as a condition of subdivision development between the creek and Renforth Drive and the section from the creek westerly including the bridge over Etobicoke Creek would be constructed by the City as part of our Capital Works Programme.

We have looked at the name to be given to this east/west arterial and have come to the conclusion that there are only two alternatives; namely,

1. Name the proposed extension as Matheson Boulevard in its entirety from Dixie Road to Renforth Drive and re-name the existing Matheson Boulevard allowance southerly from the proposed extension to Eglinton Avenue. This proposal would affect approximately 100 existing industrial premises.
2. Name the portion of the proposed extension from its intersection with the existing north/south portion of Matheson Boulevard to Renforth Drive a completely new name and retain the existing name of Matheson Boulevard between Dixie Road and Eglinton Avenue. This proposal would affect no existing addresses.

There is no doubt from a technical standpoint Alternative One is superior, however, it is felt that the impact on Owners and Tenants would be very significant and would outweigh the advantages. It is also our opinion that the use of appropriate directional signing can minimize the negative aspects of Alternative Two.

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Chairman and Members of the
Public Works Committee
March 31, 1983

Subject: Naming of a street relating to the
extension of Matheson Boulevard to
Renforth Drive.

COMMENTS - cont'd. By copy of this report to the Ward Councillor we are requesting that he attend the Public Works Committee meeting at which this item is to be discussed in order that he can express his views at that time.

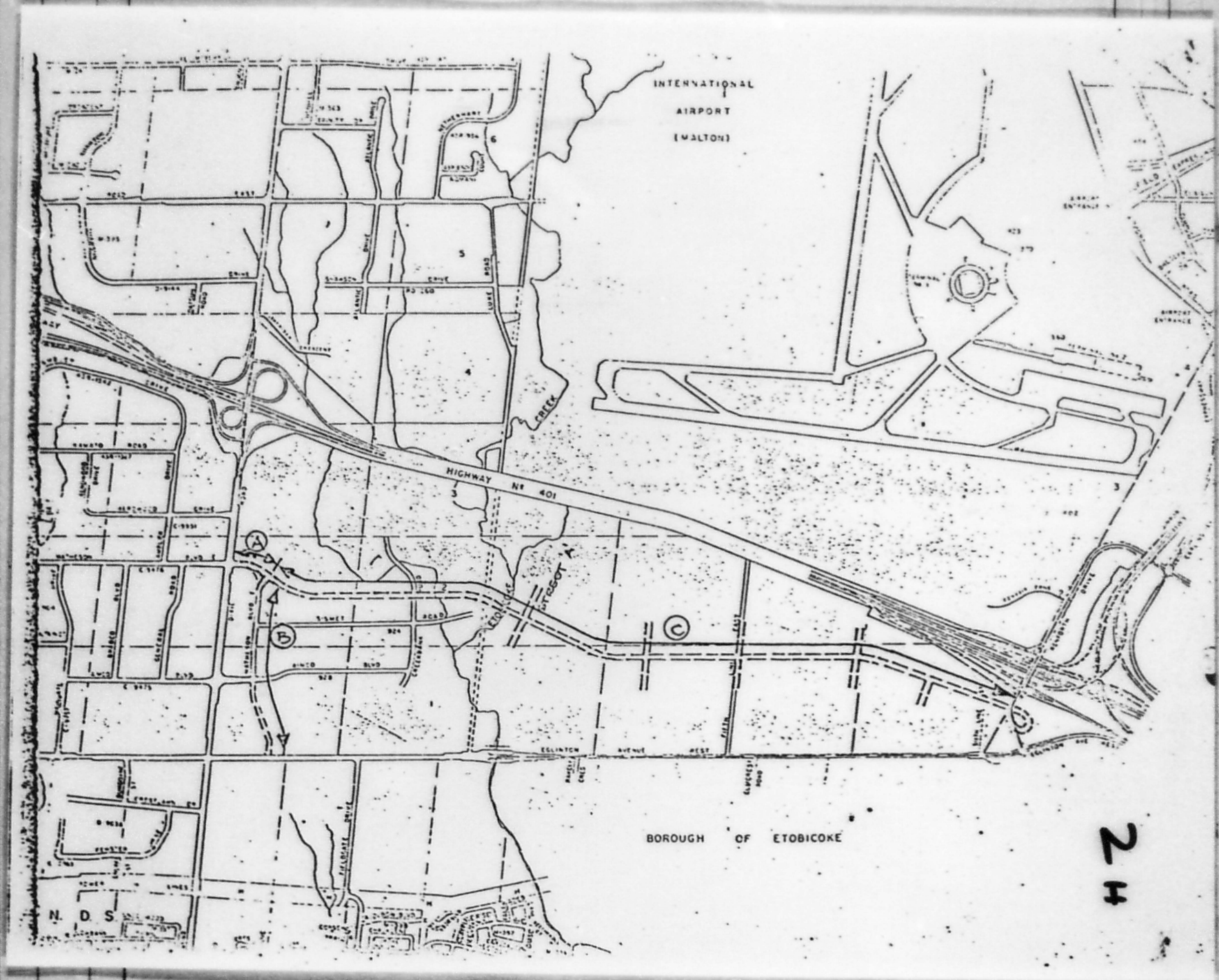
- RECOMMENDATIONS:
1. That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the re-aligned north/south portion of Matheson Boulevard (shown 'A' on attached sketch) and the re-aligned north/south portion of Matheson Boulevard (shown 'B' on attached sketch) remain as Matheson Boulevard.
 2. That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (shown 'C' on attached sketch) be named with a different name.
 3. That the name selected be referred to the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

ORIGINAL SIGNED BY

AEM:dw
Attach.

William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.

c.c. Mr. E. M. Halliday
Councillor F. McKechnie
Mr. R. W. Barker



24

PUBLIC WORKS COMMITTEE
DATE: OCTOBER 20, 1983

SUMMARY OF UNFINISHED BUSINESS

128C/17C

Page 1

REQUEST NO.	REPORT REQUESTED FROM	SUBJECT	SOURCE	DUE DATE	NO. OF REVISIONS
163-82	Eng. & Works	Second Assessment of "rippled" pavement used as a speed deterrent on roadway at Mineola Rd. E. and Indian Road	Public Works - May 20/82 Public Works - July 6/83	June, 1984	
135-83	Eng. & Works	Feasibility of installing flashing amber lights at bus stops on North and South Service Roads	Transit Comm. - July 8/83	Nov. 28, 1983	
163-83	Eng. & Works Legal	Concerns expressed by staff and Public Works Committee on a "module type" Development Concept Plan	Public Works - Aug. 10/83	Nov. 20, 1983	
177-83	Eng. & Works	Policy re: reconstruction of streets under a local improvement program	Council, Sept. 12/83	Nov. 20, 1983	
201-83	Eng. & Works	Policy - employment of local trucks within the City of Mississauga for the purpose of snow removal	Council, Oct. 11/83		

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DARCY B. G. DUTTON, B.Sc., M.E.C., P.Eng.
City Engineer
TELEPHONE 679-4925



ENGINEERING DEPARTMENT
300 DUFFERIN AVENUE
P.O. BOX 5035
LONDON, ONT. N6A 4L9

IN REPLY PLEASE REFER TO:

OUR FILE NO. 154/S/11
ATTENTION: D. B. Dutton
TELEPHONE NO. 519-679-4925

August 16, 1983

Mr. Wm. P. Taylor
Commissioner of Engineering
City of Mississauga
1 City Centre Drive
Mississauga, Ontario
L5B 1M2

Dear Sir:

Private Streets

With reference to your telephone inquiry, enclosed is a copy of the Municipal Council resolution on private streets. Also attached is a list of private streets in the City, together with a report from the Ministry of Municipal Affairs and Housing and other pertinent information.

Should you wish to view any of these locations, please advise me of the day and time that you will be arriving in London for this purpose so that appropriate arrangements can be made.

Yours truly,

D. B. Dutton

D. B. Dutton, P. Eng.
City Engineer

DKS/cs

attachments

ENGINEERING WORKS & BLDG. DEPT.		
RECEIVED FILE		
AUG 19 1983		
To	Initials	Date
W.P.T.		
D.B.D.		

c.c. given

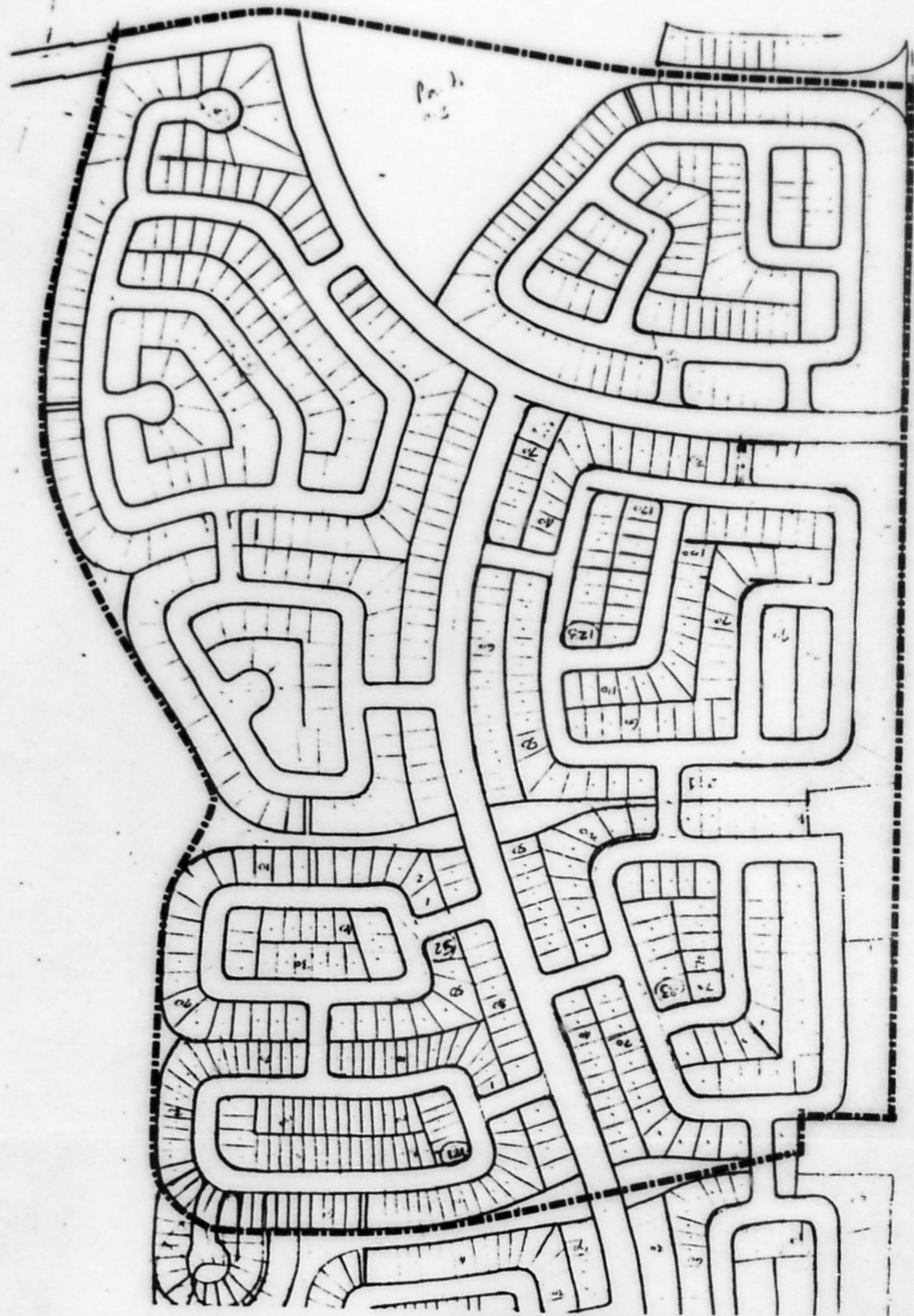
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Why then, do we have this dilemma of negative perception?

People generally do not understand the advantages of innovation. They suspect the worst. They cannot readily evaluate the results of innovative land use and development methods. When such proposals do go forward, approval agencies have no criteria, no research on which to judge for themselves because they are too busy keeping up with existing traditional plans and proposals. They have not done the necessary research and there is really no incentive for them to do so.

Even if the cost of repair of private roads were assumed by the City -- i.e. repaving and general upkeep, it would not entail a greater public expense than that associated with conventional subdivision development, because the sum-total of public and commonly-owned private road surfaces in the modular lot subdivision is less compared to the conventional system.

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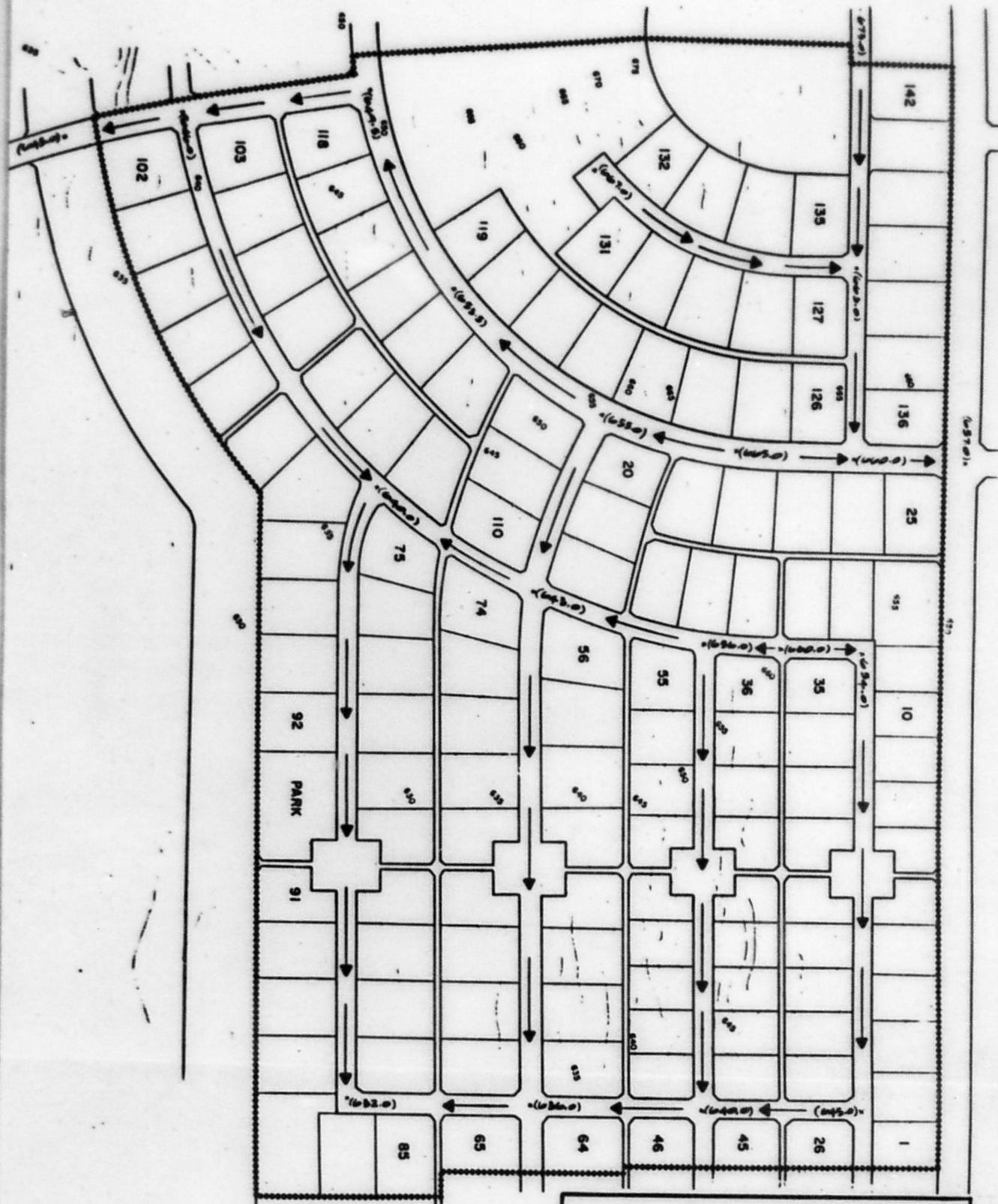
paul theil associates limited
consulting engineers
700 Balmoral Drive, Bramalea, Ontario

LISGAR
CONVENTIONAL
SYSTEM.

LOT

DATE JAN. 1983
SCALE N.T.S.
PROJECT NO. 7908

12666



	paul theil associates limited consulting engineers 700 Balmoral Drive, Bramalea, Ontario	
	LISGAR INNOVATIVE  SYSTEM.	
DATE: JAN. 1983		
SCALE: N.T.S.		
PROJECT NO 7908		

1 WWWW



3

paul theil associates limited
consulting engineers

RECEIVED OCT 0 7 1983

700 BALMORAL DRIVE, BRAMALEA, ONTARIO L6T 1X2 (416) 792-2215

September 30, 1983

First City Development Corp. Ltd.
99 Avenue Road, 10th Floor
Toronto, Ontario
M5R 2G6

Attention: Mr. D. Strachan
Vice-President, Land Department

RE: LISGAR

Dear Sirs:

We have, as requested, prepared the attached cost comparison of maintenance costs between the sample area of conventional and modular lotting, as defined in our letter of September 28, 1983.

We have obtained the actual maintenance cost expenditures for roadways for 1982 in the City of Mississauga and attach a copy for your reference. Mississauga, however, do not relate their maintenance costs to road mileage, since most of the work is done on a contract hourly basis. We have, therefore, obtained the City of Brampton maintenance expenditures for the period from 1975 to 1981, copy attached, which relates to mileage distances. We have used these figures to determine costs per foot of road after updating the 1981 costs to 1983 rates.

Yours very truly,

PAUL THEIL ASSOCIATES LIMITED

David G. Dodwell
Senior Associate

DGD:jh
7908
Encl.

P.S. Attached also is a copy of the cost of resurfacing private laneways, as requested.

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LISGAR

City Annual Maintenance Cost Comparison between the Conventional and Modular
Lot Systems

		<u>Conventional</u>	<u>Modular</u>
Length of Municipal Roads		29,200 L.F.	15,200 L.F.
<u>Maintenance Item</u>	<u>Cost per Ft.</u> <u>(1983)</u>		
1. Cleaning of Catchbasins, curb & gutter & storm sewers	0.115	3,358.00	1,748.00
2. Patching & spray patching	0.206	6,015.20	3,131.20
3. Sweeping, Flushing & Cleaning	0.123	3,591.60	1,869.60
4. Resurfacing	0.175	5,110.00	2,660.00
5. Snow Plowing & Removal	0.115	3,358.00	1,748.00
6. Sanding and Salting	0.181	5,285.20	2,751.20
7. Winter Standby	0.109	3,182.80	1,656.80
8. Safety Devices, Signs, Guiderails, etc.	0.204	5,956.80	3,100.80
9. Miscellaneous	0.073	2,131.60	1,109.60
10. Maintenance Overhead	0.139	4,058.80	2,112.80
TOTALS: \$1.44		\$42,048.00	\$21,888.00
<u>Cost Per Mile</u> = \$1.44 X 5,280 = \$7,600.00			
Cost Savings to City on Maintenance			\$20,160.00
Say			\$20,000.00

12/31

MAINTENANCE URBAN/RURAL

Page 2 of 2

THE CORPORATION OF THE CITY OF MISSISSAUGA

MAINTENANCE EXPENDITURE AND SUBSIDY REPORT
FOR PERIOD ENDING December 31, 1982

	PROJECT	ESTIMATED FOR YEAR		ACTUAL TO DATE	
		Expenditure	Subsidy	Expenditure	Subsidy
	BRIDGES & CULVERTS				
	Bridges and Culverts @ 56%	318,800	226,400	332,347	186,114
	ROADSIDE MAINTENANCE				
1	Grass Mowing & Weed Spraying			327,304	
2	Brushing, Tree Trimming & Removal			217,559	
3	Ditching *				
4	Catch Basins, Curb & Gutter Cleaning Storm Sewers			1,008,507	
5	Debris & Litter Pick-up			279,683	
3	Total Roadside Maintenance	1,477,100	818,900	1,833,053	916,527
	HARDTOP MAINTENANCE				
-1	Patching & Spray Patching			902,883	
-2	Sweeping, Flushing, Cleaning			399,720	
-3	Shoulder Maintenance - Grading Patching, Washouts, Dust Layer			211,937	
-4	Resurfacing *			921,188	
C	Total Hardtop Maintenance	2,096,300	1,082,900	2,435,728	1,217,864
	LOOSE TOP MAINTENANCE				
-1	Patching & Washouts				
-2	Grading & Scarifying				
-3	Dust Layer			2,699	
-4	Prime or Priming			6,498	
-5	Gravel Resurfacing *			118,126	
D	Total Loose Top Maintenance	113,800	66,800	127,323	63,662
	WINTER CONTROL				
-1	Snow Plowing & Removal			1,249,575	
-2	Sanding & Salting			881,766	
-3	Snow Fence, Culvert Thawing Etc.			128,290	
-4	Winter Standby *			638,582	
E	Total Winter Control	2,965,100	1,457,800	2,898,213	1,449,107
	SAFETY DEVICES				
F	Safety Devices, Signs, guiderails Rail road Maintenance	844,800	458,700	848,353	424,177
	MISCELLANEOUS				
G	Total for Miscellaneous	35,000	20,000	337,958	168,979
	SUB-TOTAL (A to G)	7,851,600	4,231,500	8,812,975	4,426,430
	OVERHEAD				
H	Total Maintenance Overhead *			616,908	308,454
	TOTAL (TO PAGE 1)	7,851,600	4,231,500	9,429,883	4,734,884

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From 1982 Update.
CITY OF BIRMINGHAM
MAINTENANCE EXPENDITURES

CATEGORIES & ACTIVITIES		1975	1976	1977	1978	1979	1980	1981
BRIDGES & CULVERTS								
A	Bridges & Culverts	28,346	89,231	106,565	32,668	9,109	23,875	13,814
ROADSIDE MAINTENANCE								
B-1	Grass Mowing & Weed Spraying	27,312	36,539	30,208	35,577	26,423	102,389	92,281
B-2	Brushing, Tree Trimming & Removal	16,509	20,153	102,387	78,603	102,118	95,196	95,025
B-3	Ditching	42,781	57,413	94,462	109,504	115,482	138,072	178,135
B-4	Catch Basins, Curb & Gutter Cleaning Storm Sewers	42,631	63,039	78,473	86,578	116,294	106,208	178,101
B-5	Debris & Litter Pick-up	94,251	99,761	125,438	133,829	187,648	160,763	123,031
B	Total Roadside Maintenance	223,484	276,905	430,968	444,091	547,965	602,628	666,590
HARD TOP MAINTENANCE								
C-1	Patching & Spray Patching	148,708	222,093	239,370	274,563	368,023	304,630	318,220
C-2	Sweeping, Flushing, Cleaning	100,242	108,665	155,878	170,796	182,709	164,195	191,214
C-3	Shoulder Maintenance - Grading Patching, Washouts, Dust Layer	5,325	9,450	12,609	14,570	12,010	9,042	17,488
C-4	Resurfacing	187,148	210,609	255,430	218,355	216,203	220,093	271,533
C	Total Hard Top Maintenance	441,423	550,817	663,287	678,284	778,945	697,960	798,455
LOOSE TOP MAINTENANCE								
D-1	Patching & Washouts	13,682	42,547	40,853	53,387	31,457	28,894	9,813
D-2	Grading & Scarifying	40,803	37,434	60,145	68,631	53,608	64,443	59,002
D-3	Dust Layer	33,898	30,140	31,395	36,158	12,392	25,280	23,062
D-4	Prime or Priming	—	—	—	—	—	—	—
D-5	Gravel Resurfacing	83,973	103,330	105,517	107,658	117,624	122,658	92,690
D	Total Loose Top Maintenance	172,356	213,451	237,910	265,834	215,081	241,275	184,567
WINTER CONTROL								
E-1	Snow Plowing & Removal	156,301	279,519	372,365	394,233	335,039	177,141	177,494
E-2	Sanding & Salting	126,069	182,815	198,633	329,983	314,212	294,476	279,567
E-3	Snow Fence, Culvert Thawing Etc.	24,045	33,855	53,104	42,893	108,407	119,538	66,524
E-4	Winter Standby	—	—	52,075	43,987	64,202	—	168,101
E	Total Winter Control	306,415	496,189	676,177	811,096	821,860	591,155	691,691
SAFETY DEVICES								
F	Safety Devices, Signs, Guide Rails, Railroad Maintenance	128,414	154,579	227,699	253,806	217,475	320,324	315,747
MISCELLANEOUS								
G	Total Miscellaneous	132,298	196,948	157,553	141,438	149,119	101,593	113,496
	SUB TOTAL (A To G)	1,432,736	1,948,120	2,500,159	2,627,217	2,739,554	2,578,810	2,784,364
OVERHEAD								
H	Total Maintenance Overhead	100,292	136,368	175,011	183,905	191,769	200,641	213,736
	TOTAL	1,533,028	2,084,488	2,675,170	2,811,122	2,931,323	3,057,930	3,297,711
I	Mileage Totals	239.9	268.0	306.25	311.7	318.3	323.0	329.5

* Including 278,479 for fringe benefits (31% of 898,322) in 1980.
 Including 297,609 for fringe benefits (31% of 960,028) in 1981.

1222

LISGAR

7908
September 30, 1983

Private Road System

Cost of road resurfacing in 1983 dollars

1. Cleaning of existing surface	400 s.y. @ 0.10 s.y.	400.00
2. Raise M.H. and C.B. to new grade	3 @ 150.00	450.00
3. Application of tack coat	400 s.y. @ 0.20 s.y.	800.00
4. Padding of road to reshape crown and fill settled areas	L.S.	350.00
5. Supply and place 1" H.L.3 overlay	400 s.y. @ 4.50	1,800.00
		3,800.00
Contingencies		380.00
		\$4,180.00
	Say	\$4,200.00
Cost per Unit		\$ 700.00

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Background Information

Present Policy

Most of the presently existing private streets are created by means of Condominium developments.

1. We do provide garbage collection in most of the cases
2. We do not clear snow even if they are prepared to pay the costs
3. We do not repair those streets even if they are prepared to pay the costs

4. We do not look after the underground utilities

5. Public Utilities Commission

-watermain and water service connections are maintained by the owners, there may be individual meters for units

-electrical services are on easements and the P.U.C. maintains them in all cases

What constitutes assumption of a street:

- normally a by-law is passed by the municipal council
- assumption of underground services and continuous maintenance of underground services (not necessarily)
- continuous use by the public (20 yrs) *What about laneways?*
- providing maintenance from public funds
 - snow clearing
 - repairing, maintenance etc.

What can force a municipality into assuming a private street

- public pressure to the elected officials
- legal action: people might take the City to court
(Windermere Court and Chelsea Court/Rudy Street being dedicated public highways, court action against City is most likely to succeed)

extension of a private street for public purposes, City's own initiative.

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What action may be taken by the City to avoid any possible assumption by the City of private roads on dedicated road allowances.

-include clause(s) in agreements forcing some sort of Co-op or home owners association to look after all aspects of maintenance of these private streets (snow ploughing, repairs

whatever) — Not in agreement. — Legal left it.
— Road could be substandard.

-attempt to close these private roads as soon as possible and include a covenant(s) in the joint maintenance agreement or in some agreement so that people living on these streets are aware of the circumstances and don't object to the closing of these streets — Not in agreement.

Problems -do not provide any services from public funds
- We could not enforce parking regulations on street [Municipal Regulation]
- because not assume
- Accident could be investigated perhaps. - Dedicated as a Public Highway.
Recommended Policy — Problem with packers using road - any assumption
— What about fire dept with unrestricted parking

If lots are not more than 10-12' and the geometry of the street is o.k., permit a private street on a dedicated public road allowance with a minimum of 50' R.O.W. Minimum pavement width is not to be less than 22'. The City prepares a layout of all utilities on the R.O.W.

If care is taken in the layout and design of these streets, it may not be the end of the world to assume them if we are forced into it.



DEPARTMENT OF THE CITY CLERK

300 DUFFERIN AVENUE, P.O. BOX 5035, LONDON, ONTARIO N6A 4L9

REFER TO B7C
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JUL 8 1983

COPIES TO:

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July 6, 1983

Mr. K. L. Perry
Director of Planning and Development

I hereby certify that the Municipal Council, at its session held on July 4, 1983, resolved:

5. That, on the recommendation of the Director of Planning and Development and the City Engineer, the following Guidelines be adopted for Private Streets:

- (a) Council will not approve private streets to serve free-hold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except as indicated below. All developments of this type must be served by public streets designed to current standards and to the specification of the City Engineer.
- (b) Council will consider for approval private streets for residential and non-residential developments provided that the developments are under ownership of a Condominium Corporation, or Co-operative Corporation, under the relevant Provincial Act, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.
- (c) Council will consider, in exceptional situations, the approval of private streets in "common-law" co-operatives. Where the subdivision of land occurs by Committee of Adjustment consent, the administration will request that a condition be put on Title to make it clear that the street is private and will not be assumed for maintenance purposes by the City.
- (d) The City Engineer may consider some deviation from current City Standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc. (59.24.4) (5/15/PC)

P.C. Mc Norgan for T L

P. C. McNorgan
City Clerk

PCM/gh

c.c. Jack E. Davis, 425 William Street, London, N6B 3E1
Urban Development Institute, P.O. Box 5099, London, N6A 4N8
R. A. Blackwell
E. T. Cozens
A. S. Dobronyi
D. B. Dutton
J. Morgan
Policy Book

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Director of Planning and Development and the City Engineer
RECOMMENDED, pursuant to Clause 3-11/11/LUDC/1982, the fol-
lowing Guidelines be adopted for Private Streets:

- 1) "Council will not approve private streets to serve freehold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except as indicated below. All developments of this type must be served by public streets designed to current standards and to the specification of the City Engineer."
PUBLIC STREETS. CITY STANDARDS
- 2) Council will consider for approval private streets for residential and non-residential developments provided that the developments are under ownership of a Condominium Corporation or Co-operative Corporation under the relevant Provincial Act, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.
PRIVATE ST. CITY STANDARDS
- 3) Council will consider, in exceptional situations, the approval of private streets in "common-law" co-operatives. Where the subdivision of land occurs by Committee of Adjustment consent, the administration will request that a condition be put on Title to make it clear that the street is private and will not be assumed for maintenance purposes by the City.
PRIVATE ST. NOT TO BE ASSUMED * BY THE CITY REG. ON TITLE
- 4) The City Engineer may consider some deviation from current City Standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc."
PUBLIC STREETS. SOME VARIATION FROM CITY STDS.

BACKGROUND INFORMATION

At its meeting on May 31, 1982, the Land Use and Development Committee took the following action:

"That the Director of Planning and Development's proposed Guidelines for Private Streets be referred back to the staff with the request that the guidelines be circulated for input by various groups in the development industry, and that a public meeting be held when the matter is re-submitted to the Land Use and Development Committee for consideration." (59.24.4) (3-11/11/LUDC)

In the above report, the City Engineer and I expressed our concerns about private streets. A copy of the Report is attached. At that time, we recommended that private streets be created only by a registered Condominium Corporation.

Subsequently, we discussed the matter with representatives of the local development industry. It was their position that private streets could also be the responsibility of a legal entity which was not a condominium under The Condominium Act. We now agree that this type of "common law" co-operative may also be appropriate.

After considerable discussion with the Legal Department, we feel it is sufficient protection to the City to alert purchasers of freehold lots on private streets of their obligation as in No. 13 of the above recommendation.

The Urban Development Institute has expressed their support for the recommended approach (copy of letter attached). We have received no other comments as a result of the notice of public meeting, published in Civic Corner of the London Free Press, 1983.

JRT/mat
May 27, 1983

Council will not approve private streets to serve freehold (individually owned) single detached, semi-detached, duplex or rowhouse dwellings except where the private street is owned as a common element by a registered Condominium Corporation. All other developments of these types must be served by public streets designed to current standards and to the specification of the City Engineer. 155

Revised
Council will approve private streets for residential and non-residential provided that the developments are under one ownership by a Condominium Corporation, and that the private streets are designed to current standards as set out in the Site Planning Guidelines and to the specifications of the City Engineer.

The City Engineer may consider some deviation from current City standards for public streets where warranted by a specific development proposal such as estate lots, constrained site dimensions, infill developments, desire to preserve topographical or vegetation features, etc.

Background Information

For sometime, the City Administration has reviewed proposals for freehold developments on private streets which serve more than one dwelling or establishment in separate ownership. These private street proposals have been for residential low density developments. Following are some examples of this type of development.

1. Z-1430 - 251-253 Epworth Avenue, S/S, 251555 Projects Ltd.
No. of Lots - 11, Date approved July, 1975

- The zoning by-law passed permitted 10 single family and 3 semi-detached courtyard houses.
- Application to Committee of Adjustment in June, 1976, to reduce the total number to 11 and to eliminate the semi-detached units, was granted.
- Council on November 1, 1976 exempted the lands from part lot control and approved "lotting".
- A development agreement registered June 1975 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.

2. Z-2010 - Hunt Club Drive, Sifton Properties Limited
No. of Lots - 27, Date approved January, 1978

- The zoning by-law passed permitted 27 single sideyard detached family dwellings.
- Consent to sever for 22 zero lot line single family and 3 conventional single family "lots" was granted by Committee of Adjustment on August 21, 1978.
- A development agreement registered April, 1978 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.

3. Z-2068 - 231 Windsor Avenue, G. R. Glatt
No. of Lots - 9, Date approved April, 1978

- The zoning by-law passed permitted 8 single family and 1 semi-detached dwellings.
- A development agreement registered July, 1978 was entered into with the City. Maintenance of the private street to be the responsibility of the developer or joint owners.
- Consent to sever for 9 single family lots granted by the Committee of Adjustment October, 1978.

4. Z-2282 - N/S Windermere Road, opposite Corley Drive, Enod Holdings Ltd. - No. of Lots - 18, Date approved September, 1980

- The zoning by-law passed permitted 18 single family dwellings.
- A subdivision agreement registered August, 1981 was entered into.
- The Ministry would not accept this proposed development of 18 lots on a private street, therefore, the developer dedicated the street to the City.
- Maintenance of the private street to be the responsibility of the developer or joint owners.

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5. OZ-2469 - 1/3 Rudy Street, south of Commissioners Road, Landar Dev. Ltd.
No. of Lots - 17 maximum, Date approved March, 1981
- Official Plan Amendment from D5 to D10 passed by Council September 1980.
 - A zoning by-law permitting 15 units per hectare passed September 1980 and amended March, 1981 for 17 single family.
 - Development agreement registered May, 1981. The applicant originally envisaged a condominium development on a private street. Changed to subdivision.
 - The Ministry of Housing would not accept this proposed subdivision on a private street.
 - Subsequently, a Plan of Subdivision was placed upon the lands. Approved by Council September, 1981 and by OMB. October, 1981, not yet registered.
 - Subdivision Agreement registered February, 1982.
 - The street has been dedicated, although substandard, the City will assume and accept 15 m width with 1.5 m easements either side.
6. Z-2698 - S/S between Rideau Gate and north branch of the Thames River, R. Peever, No. of Lots - to be determined, Date approved
- L.U.D.C. recommended to Council April 26, 1982.
 - The City will not assume the street.

PROBLEMS

A recent report prepared by the Ministry of Municipal Affairs and Housing points out some of the potential problems with private roads. Property owners on private roads may pressure the municipality to accept ownership of their roads and to maintain them. In this way, they may achieve the same standard of road service as public road residents without paying for the upgrading of the road to City standards. Further, they may not be able to achieve at a later date, the City standards due to physical constraints.

Financial

- private road residents generally are not taxed at any less rate than public road residents, even though their road access is less than the standard of a public road.
- landowners may have encountered administrative and financial problems in arranging adequate private road maintenance.
- residents may perceive the municipality as a provider of services, including roads.

Where any municipal services are provided on private roads, additional pressure often occurs for the municipality to assume full responsibility for the maintenance of these roads.

Two costs can result from bringing a private road into the public road system. First, the road must be improved to the minimum Ministry of Transportation and Communications standard if it is going to qualify for their subsidy. If it is not or cannot be brought up to standard, no subsidy will be available.

Second, once the municipality acknowledges the dedication of a road as public and assumes maintenance responsibilities, there is a continuing local cost, beyond the provincial maintenance subsidy (if applicable) to maintain the road. All the ratepayers in the municipality pay this unsubsidized maintenance cost as well as the cost of increased public services provided, such as police protection, snow plowing, school busing and garbage collection.

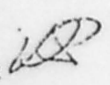
Legal

The basic legal issue raised by private roads is determining whether roads are in fact public or private.

This issue is important because a semi public use of these roads for public use of private roads and the provision of any municipal services on these roads forms dedication of the road and municipal acceptance of maintenance responsibilities. lu

It is our view that streets to serve freehold lots should either be private streets which are common elements of a registered Condominium Corporation or public streets dedicated by Plan of Subdivision. Although, the City does not have any responsibility for services on private property including private streets, we are concerned that the above problems could arise in the future.

These potential future problems can be avoided by either providing a public street in the first instance with normal City responsibility for the street or ownership under a Condominium Corporation which was expressly designed to deal with streets and other commonly owned elements.

JKT:mm
May 27, 1992 

1. DRAFT LEGAL DESCRIPTION

(ASSUMES THAT THERE WILL BE A CLUSTER CONSISTING OF 7 BLOCKS (1-6 FOR THE "LOTS", 7 FOR THE LANEWAY") SO THAT EACH UNIT'S DESCRIPTION WOULD START WITH 1 BLOCK TOGETHER WITH AN UNDIVIDED 1/6th INTEREST IN BLOCK 7).

ALL and SINGULAR that certain parcel or tract of land and premises situate, lying and being in the City of Mississauga, in the Regional Municipality of Peel, and being composed of the whole of Block 1, Registered Plan 43M-0, and an undivided 1/6th interest in Block 7, on said Plan 43M-0.

TOGETHER with a right-of-way for pedestrian and vehicular passage over, along and upon said Block 7 Plan 43M-0, in common with all others entitled thereto (and which right-of-way is conditional upon compliance with the restrictive covenants hereinafter set forth);

SUBJECT to a right-of-way for pedestrian and vehicular passage over, along and upon said Block 7, Plan 43M-0, in favour of the owners and occupants from time to time of Blocks 2-6, Plan 43M-0;

AND SUBJECT to the restrictive covenants and building scheme recorded as Instrument No. 00

And to the intent that the benefit of the following covenant shall be, and form part of the description of the said lands, and Blocks 2-6, and 7, on Plan 43M-0, and that the burden thereof shall run with and be binding upon the said lands, the transferee, its successors and assigns:

- (a) shall not build, nor permit, any structures of any kind or fence to be built upon any part of Block 7, Plan 43M-0, nor in any way interfere with the common right-of-way affecting such Block;

- (b) shall not use, not permit to be used any part of Block 1, Plan 43M-Ø for means of vehicular passage or access to or from the said lands;
- (c) shall not use any lands for pedestrian or vehicular passage or access to or from the said Block 1, Plan 43M-Ø other than the common right-of-way hereinbefore described over Block 7 Plan 43M-Ø.
- (d) shall contribute a one-sixth (1/6th) share (in common with the owners from time to time of Blocks 2-6 respectively on said Plan 43M-Ø) on account of the maintenance and repair of the common right-of-way hereinbefore described over said Block 7, Plan 43M-Ø.
- (e) shall not transfer or charge the whole or any parcel, unless:
 - (i) such transfer or charge is with respect to the whole of Block 1 and the undivided 1/6th interest in Block 7, on Plan 43M-Ø; and
 - (ii) such transfer or charge contains reference to the common right-of-way over Block 7 on Plan 43M-Ø, and contains all of the covenants herein set forth and refers to the building scheme and restrictions in Instrument No. ØØ.

3.

2. DRAFT BUILDING SCHEME-RESTRICTIVE COVENANT
(TO BE ANNEXED TO TITLE OF EACH OF BLOCKS 1-6)

For the purpose of promoting a building scheme for the common and mutual benefit of the owners from time to time of the lands described as Blocks 1 to 6 on Plan 43M-Ø;

And for the purpose of imposing a common burden on such owners corresponding thereto;

And to the intent that the benefit and burden of the following restrictions and covenants shall form part of, be annexed to, and run with the lands hereinbefore described, and enure to the benefit of, and be binding upon the owners from time to time of the said lands, their successors and assigns forever:

1. No person shall erect or maintain, nor permit to be erected or maintained any structure of any kind or fence upon any part of Block 7 on Plan 43M-Ø, nor in any way interfere with the common right-of-way affecting such Blocks;
2. No person shall use, nor permit to be used any part of Blocks 1-6, Plan 43M-Ø for means of vehicular passage or access to or from any of the said Blocks 1-6;
3. No person shall use, nor permit to be used any lands for pedestrian or vehicular passage or access to or from any of the said Blocks 1-6, Plan 43M-Ø other than the common right-of-way which exists over Block 7, Plan 43M-Ø;

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4.

4. No person shall undertake any manner of repairs, maintenance, construction, re-construction or renovation of all or any part of the common right-of-way which exist over Block 7, Plan 43M-Ø other than where there has been a concurrence in such undertaking by the owners of not less than four (4) of the lands described respectively as Blocks 1-6 on Plan 43M-Ø; (Note 1)

5. Each owner from time to time of the lands described respectively as Blocks 1 to 6 on Plan 43M-Ø shall contribute a one-sixth (1/6th) share (in common with the remaining owners from time to time) on account of maintenance and repair of the common right-of-way over said Block 7, on Plan 43M-Ø, and in this regard, decisions made by concurrence in any such undertaking by the owners of not less than four (4) of the aforementioned six (6) parcels shall govern, and be binding upon the owners of each of the said six (6) parcels;

6. No owner shall use the common right-of-way, nor permit it to be used by invitees, licensees agents or contractors unless he maintains public liability insurance in an amount designated from time to time by a majority of the owners of Blocks 1-6, and has available, on request, a certificate confirming such coverage;

7. Each owner acknowledges that the repair and maintenance of the common right-of-way over Block 7, is the private and sole responsibility of the owners from time to time of Block 7, and that the Corporation of the City of Mississauga therefore has no obligations in respect thereto.

Notes:

1. Original grantor (developer) may reserve right-of-way over laneway for limited period (e.g. 10 years) and participate as a voting, but non contributing participant in owners votes with respect to road maintenance and repair.
2. Original grantor may be separate instrument (or incorporated into restrictions) assume responsibility for repairs of laneway during a stipulated limited warranty period.
3. Original grantor will receive a rent charge charged against the respective owners and in support of performance of covenants; rent charge will be assigned to each successive owner from time to time.

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I. NATURE OF RENTCHARGES AND ANNUITIES

(1) IN GENERAL

1201. **Distinction between rentcharge and annuity.** The right created by an instrument (whether a deed, will, codicil or statute) to receive a definite annual sum of money is an interest which may be either a "rentcharge" or an "annuity". If the annual sum is charged on and payable exclusively out of land¹, the interest is a rentcharge². Important changes have been made to the law of rentcharges by the Rentcharges Act 1977, which (save for limited exceptions) prohibits the creation of new rentcharges after 22nd August 1977, and provides for the extinguishment of existing rentcharges in the course of time³. However, if there is no charge or the annual sum is charged on personal property or a mixed fund, then the interest is an annuity⁴. A rentcharge charged on freehold land, or on another perpetual rentcharge, is real property⁵, but, if charged on leasehold land, although properly called a rentcharge, it is a chattel real in the nature of personal property⁶. An annuity is personal property⁷. A basic distinction between a rentcharge and an annuity is that a rentcharge is

recoverable by distress¹ whereas, in the absence of express provision², an annuity is not so recoverable³. The difference between real and personal property is of importance in connection with the administration of the estates of deceased persons⁴ and especially in relation to capital transfer tax⁵.

¹ For the meaning of "land", see generally *REAL PROPERTY*, para. 377, ante.

² *Savory v Dyer* (1752) Amb 139; *Weston v Boures* (1742) 9 Mod Rep 309; *Buttery v Robinson* (1826) 3 Bing 302; *Ramsay v Thornegate* (1849) 16 Sim 575, where the gift was to A, her executors, administrators and assigns; *Patching v Barnett* (1881) 51 LJ Ch 74, CA; *Re Waring, Green v Waring* [1896] 1 IR 427.

³ See the *Rentcharges Act 1977*, s. 2, 3, 18 (2). This Act implements, with some modifications, the recommendations made by the Law Commission in their Report on *Rentcharges* (Law Com. no. 68), and is based upon the draft Bill appended to that report. The main provisions of the *Rentcharges Act 1977* are those which prohibit the creation of ordinary rentcharges (see s. 2, and para. 1224, post), provide for the compulsory extinguishment of existing rentcharges (see s. 3, and para. 1344, post), and provide for the redemption and apportionment of rentcharges in the place of existing procedures (see ss. 4-10, and paras. 1293 et seq., 1350 et seq., post). It follows that (save for the prohibition provisions) the law relating to rentcharges prohibited by the *Rentcharges Act 1977*, and then only until those rentcharges are in due course extinguished, and to the limited classes of rentcharge which are destined to survive.

The *Rentcharges Act 1977* applies in relation to any land in which there subsists a Crown interest as it applies in relation to land in which no such interest subsists: s. 14 (1). "Crown interest" means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster or to the Duchy of Cornwall or to a government department, or which is held in trust for Her Majesty for the purposes of a government department: s. 14 (2).

⁴ *Savory v Dyer* (1752) Amb 139; *Autin v Duly* (1820) 4 B & Ald 59; *Radburn v Jervis* (1841) 3 Beav 450; *Co Litt* 202, 2 Bl Com (14th Edn) 40. As to the creation of annuities, see paras. 1239 et seq., post. As to personal property, see *PERSONAL PROPERTY*, vol. 35, paras. 1101 et seq.

⁵ See e.g. *Savory v Dyer* (1752) Amb 139 at 140; and see para. 1208, post.

⁶ *Re Fraser, Lanthier v Fraser* [1904] 1 Ch 726, CA. See also *St Aubyn's Case* (1590) Cro Eliz 183; (1892) 29 LR Ir 416; and see para. 1231, post. As to chattel real, see generally *REAL PROPERTY*, paras. 301, 303, ante.

⁷ See para. 1213, post.

⁸ As to the recovery of an annuity charged by an order under the *Housing Act 1957*, s. 14, 15, see para. 1258, note 2, post, and *troussing*, vol. 22, paras. 582, 583.

⁹ As to the recovery of annuities, see generally paras. 1335 et seq., post.

¹⁰ See para. 1281 et seq., post.

¹¹ See para. 1312, post.

¹² See para. 1312, post.

¹³ See para. 1281, post.

¹⁴ See e.g. *Re Fraser, Lanthier v Fraser* [1904] 1 Ch 726, CA. The question whether the payments constitute a rentcharge or annuity is no longer of importance in determining the persons beneficially entitled after the death of the deceased where the deceased dies intestate, as the old rules of descent have in general been abolished in the case of death after 1925, and the same rules of intestate succession apply to all property as to which a deceased person dies intestate: see *EXECUTORS*, vol. 17, paras. 1569 et seq.

(2) NATURE OF A RENTCHARGE

1203. Meaning of "rentcharge". A rentcharge is an annual sum issuing out of land, but not as an incident of tenure¹, the due payment of which is secured by a right of distress². It is called a rentcharge because the land in respect of which it is paid is charged with a distress³. Where there was no power of distress the rent was called a rent seek⁴.

In some cases the power to distress for a rentcharge could arise at common law, apart from any express reservation⁵. In 1731 the like remedy by distress and sale as in the case of rent reserved upon lease was extended to rents seek⁶, and rents and annuities charged on land were in effect converted into rentcharges⁷. A person entitled under an instrument which came into operation after 1881 to receive an annual sum out of any land or out of the income of any land, whether charged by way of rentcharge or otherwise, not being rent incident to a reversion, now has a statutory power of distress and certain other statutory remedies⁸.

¹ See para. 1205, post.

² *Co Litt* 143b, 144a, 218a, 218b; *Tudor, LC: Real Prop* (14th Edn) 11; *Gilbert on Rents* 16; 2 Bl Com (14th Edn) 42; 18 Vin Abr 475; *Rent* (D); *Com Dig. Rent* (C) 6; *Weston v Boures* (1742) 9 Mod Rep 309; *West v Robinson* (1858) 3 CBNS 422 at 418.

³ *Co Litt* 143b; *Weston v Boures* (1742) 9 Mod Rep 309 at 310; *Re Lord Grand and Breckham's Contract* [1894] 3 Ch 295 at 308, 311, CA.

⁴ *Littleton's Tenures*, s. 218; *Weston v Boures* (1742) 9 Mod Rep 309 at 310; and see *distress*, vol. 13, para. 205.

⁵ See *Co Litt* 147a, where it is said that if a man seised of land in fee binds his goods and land to the payment of a yearly rent, this is a good rentcharge with power to distress, albeit there be no express words of charge, nor to distress; *Radburn v Jervis* (1841) 3 Beav 450; *Monypenny v Monypenny* (1861) 9 HL Cas 114 at 117, 118. The power to distress where a rent was granted (1) to a widow in lieu of dower, (2) for equality of exchange, or (3) by one coparcener to another for equality of partition; *Gilbert on Rents* 19, 20.

⁶ *Landlord and Tenant Act 1730*, s. 5. Fealty was an inseparable incident to a reversion; *Co Litt* 143a. The right of distress was inseparably incident to fealty; *Gilbert on Rents* 5, 107. Hence every rent incident to a reversion carries the right of distress. See further *distress*, vol. 13, para. 202; *LANDLORD AND TENANT*, vol. 27, para. 252.

⁷ See *Buttery v Robinson* (1826) 3 Bing 302 (annuity charged on freehold land by will); *Saffery v Leaver* (1869) LR 9 Eq 22 at 24, 25 (annuity charged on freehold land by will); *Kelsey v Kelsey* (1874) LR 17 Eq 495 (annuity charged on leaseholds by will); *Roper v Roper* (1876) 3 Ch D 714 at 720; *Re Lord Grand and Breckham's Contract* [1894] 3 Ch 295 at 311, CA (rent reserved on a conveyance, where it was said that it was the right of distress which made the rent a rentcharge). See also *Farfax v Gray* (1779) 2 Wm Bl 1326 (annuity); *Saunders v Anster* (1828) 2 Bing 519; *Dodd v Thompson* (1863) LR 1 CP 133 at 137 (charge by deed).

⁸ *Law of Property Act 1925*, s. 121, re-enacting and somewhat extending the *Conveyancing Act 1881*, s. 44 (repealed): see paras. 1313 et seq., post.

1204. Rentcharges at law and in equity. Since 1925 a rentcharge at law can only subsist as an estate in fee simple or as a term of years absolute and must be in possession, issuing out of or charged on land, being either perpetual or for a term of years absolute¹. A rentcharge (not being a rentcharge limited to take effect in remainder after or expectant on the failure or determination of some other interest) is a rentcharge in possession for this purpose, notwithstanding that the payments in respect of it are limited to commence or accrue at some time subsequent to its creation². All other interests in a rentcharge, if validly created, take effect as equitable interests³. Examples of such equitable

interests are a life interest such as a jointure, an entailed interest¹ and an undivided share of the proceeds of sale of a rentcharge held on the statutory trusts².

The distinction between legal and equitable interests becomes important when it is necessary to enforce payment because it is only the legal owner of a rentcharge who can do this directly, for example by distress, entry or limitation of a term³.

¹ Law of Property Act 1925, s. 1 (1), (2) (b). See also *REAL PROPERTY*, para. 346, ante.

² Law of Property (Entailed Interests) Act 1932, s. 2.

³ See the Law of Property Act 1925, s. 1 (1), and *EQUITY*, vol. 16, para. 1330.

⁴ See *ibid.*, s. 130, and *REAL PROPERTY*, para. 422, ante; *SITTELMENTS*.

⁵ See para. 1210, post.

⁶ See paras. 1313 et seq., post.

1205. Distinction between rentcharge and rent service. Rent¹ is either rent service² or rentcharge³. In either case it is a periodical payment made in respect of land, but the two forms of rent are fundamentally different. Rent service is incident to a reversion; it is a payment made by the tenant to the landlord as a recompense for the use of the land⁴, and the receipt of it constitutes the landlord's chief beneficial right from ownership of the reversion.

On the other hand a rentcharge is not an incident of tenure and the owner has no reversion⁵; thus a rentcharge is a burden on the ownership of the land, and, if the land is let, is in effect discharged out of the rent service which the owner receives.

¹ As to rent reserved on a lease, see *LANDLORD AND TENANT*, vol. 27, paras. 1193 et seq. As to distress for rent, see *DISTRESS*, vol. 13, paras. 205 et seq. As to the limitation of actions for the recovery of land or rent, see *LIMITATION OF ACTIONS*, vol. 28, paras. 705 et seq.

² As to services incidental to feudal tenure and the gradual development of rent service, see *REAL PROPERTY*, paras. 305 et seq., 384-386, ante.

³ According to Littleton there were three forms of rents, that is to say rent service, rentcharge and rent seck: Littleton's Tenures, s. 313. Rent seck was formerly a rent without power of distress, but, as a power of distress is now incident to every rent charged on land, every such rent is in effect a rentcharge: see para. 1203, ante.

⁴ *Eddle v Stephenson* (1822) 1 Sim & St 122 at 124.

1206. Fee farm rent and other obsolete rents. Fee farm rent is rent reserved upon a grant in fee¹. It is included in the definition of "rentcharge" in the Law of Property Act 1925², and is for practical purposes indistinguishable. Chief rent and quit rent were manorial incidents, which have been extinguished by statute³. In certain parts of England it was a common practice to sell building land in consideration of a perpetual rentcharge⁴. These rentcharges were sometimes incorrectly called chief rents.

¹ See *Co Litt* 141b; 2 Bl Com (14th Edn) 41; and the notes to *Bradbury v Wright* (1781) 2 Doug KB 624 at 627n, where it is said that the rent must be at least one-fourth of the value of the land at the time of the reservation.

² Law of Property Act 1925, s. 205 (1) (xxiii). See also the Administration of Estates Act 1925, s. 55 (1) (xxv).

³ See the Law of Property Act 1922, s. 128 (2) proviso (repealed), 138 (repealed), and *CONVEYANCES*, vol. 9, para. 782.

⁴ This practice has generally ceased by reason of the prohibition (with limited exceptions) of the creation of new rentcharges as from the 22nd August 1977 by the Rentcharges Act 1977, s. 2: see paras. 1224, 1230, post.

1207. Tithe rentcharge. A rentcharge in the ordinary sense is to be distinguished from tithe rentcharge which was a right to receive part of the produce of land commuted for an annual sum, while a rentcharge is charged on the land itself¹. Tithe rentcharge, however, was extinguished² (with an exception of little practical importance) and replaced by redemption annuities charged in respect of land and payable to the Crown for sixty years, the tithe owner being compensated with redemption stock³; and those tithe redemption annuities, charged under the Tithe Acts 1936 and 1951⁴, were extinguished as from 2nd October 1977⁵.

¹ *Bailey v Ballham* (1885) 30 Ch D 84 at 89.

² See *ECCLIASTICAL LAW*, vol. 14, para. 1211.

³ See *ECCLIASTICAL LAW*, vol. 14, paras. 1213 et seq.

⁴ Finance Act 1977, s. 56.

1208. Incorporeal nature of rentcharge. A rentcharge in fee simple is an incorporeal hereditament¹ and is real property². A rentcharge for a term of years is a chattel real and, although incorporeal, cannot properly be described as a hereditament as it is personal property³. Where a rentcharge was charged on both freeholds and leaseholds, it has been considered as issuing out of the freeholds but nevertheless with a right to distrain on the leaseholds⁴.

A rentcharge is normally a sum certain but may be a fluctuating sum⁵.

¹ *Co Litt* 493; 2 Bl Com (14th Edn) 20; *Re Brewer* (1875) 1 Ch D 409 at 410, CA; and see *REAL PROPERTY*, para. 382, ante. It has been considered that the treatment in English law of a rentcharge as an incorporeal hereditament is arbitrary: Pollock's Principles of Contract (13th Edn) 189, note.

² *Sastry v Dyer* (1752) Amb 139. A rentcharge has been said to be an interest in the land itself (*Greer v Greer* (1844) 11 Cl & Fin 491 at 508, HL) and to be a portion of the estate (*Butt v Lord Dacre* (1876) 3 Ch D 295 at 299). The owner of a rentcharge has, however, no estate in the property out of which it issues: *Re Bick, Edwards v Bush* [1920] 1 Ch 488 at 491, per Lawrence J. A rentcharge in fee was subject to curtesy (*Co Litt* 293) and dower (*Co Litt* 322; see *Chaplin v Chaplin* (1734) 3 P Wms 229). As to the abolition of tenancy by the curtesy and dower, see *REAL PROPERTY*, paras. 474, 481, ante. Formerly on the death of the owner intestate a rentcharge ordinarily descended to the common law heir, but when granted out of gavelkind land it descended in gavelkind: *Edwin v Thomas* (1687) 1 Vern 489; and see *Stokes v Erryer* (1674) 1 Mod Rep 112; *Randall v Writtle* (1672) 2 Lev 87. As to the abolition of the old rule of descent, see *EXECUTORS*, vol. 17, para. 1370. A rentcharge granted for equality of partition descended in the same manner as the land: *Co Litt* 169b.

³ See para. 1201, ante, and para. 1231, post.

⁴ *Butt's Case* (1600) 7 Co Rep 232; *Richardson v Nixon* (1845) 2 Jo & Lat 250; *Drew v Barry* (1874) 8 IR Eq 260 at 279 (Ir. CA). See also *Co Litt* 147a.

⁵ Rentcharges used as a conveyancing device to improve the enforceability of positive covenants in development schemes are sometimes fluctuating: see Report on Rentcharges (Law Com. no. 68), para. 49 (2).

1209. Rentcharge issuing out of another rentcharge. At common law, a rentcharge cannot be created by a subject so as to issue out of a rent¹ or other

3. Nature of annuity. An annuity is itself personal estate¹. Thus, annuities are held to be in the nature of personal estate when granted by the Crown out of Barbados duties², or out of the revenues of the Post Office³, or out of coal mines⁴. Similarly, where, under statutory powers, limited owners granted annuities and chattels to a company, subject to the payment of an annual rent to the grantors, their executors, administrators and assigns, the interest

The principal incorporeal hereditaments of any importance today are rentcharges, easements and profits; and in addition, something must be said of advowsons and tithes. These will now be examined.

Part 1

RENTCHARGES

Sect. 1. Nature of Rentcharges

1. Rentcharges and rent services. Periodical payments in respect of land fall under the two main heads of rentcharges and rent services. Where the relationship of lord and tenant exists between the parties, any rent payable by virtue of that relationship by the tenant to the lord is a rent service.⁴⁴ If there is no relationship of lord and tenant, the rent is a rentcharge. Thus if L grants a lease to T at £100 per annum and X charges his fee simple estate with the payment of £200 per annum to Y, L has a rent service and Y a rentcharge. Since the Statute *Quia Emptores*, 1290, it has been impossible for a grantor to reserve any services on a conveyance of freehold land in fee simple, for the grantee holds of the grantor's lord, and not of the grantor.⁴⁵ Consequently no rent reserved on a conveyance of freehold land in fee simple after 1290 can be a rent service. Although at law services could be reserved on the grant by a fee simple owner of a life estate or a fee tail,⁴⁶ it was most unusual to do so.

The only rent service met with in practice is thus the rent reserved upon the grant of a lease for a term of years. A rent reserved by a lease is annexed to a reversion in land, while a rentcharge stands on its own as an incorporeal hereditament. The majority of rent services reserved on the grant of a fee simple in freehold land before *Quia Emptores*, 1290, have remained uncollected for so long (the fall in the value of money having made them not worth collecting) that they have been both forgotten and barred by lapse of time.⁴⁷ Such rents were usually known as chief rents or

⁴⁴ *Ante*, p. 689.

⁴⁵ *Ante*, p. 30.

⁴⁶ It should be remembered that if any rent service is reserved on the grant of an estate for life, the estate is now automatically converted into a term of 90 years: *ante*, p. 642.

⁴⁷ *Owen v. de Beauvoir* (1847) 16 M. & W. 547. Uncollected freehold rent services were barred after twenty years under the Real Property Limitation Act, 1833, s. 2; but *quære* whether they are within the Limitation Act, 1939; *post*, p. 1018.

quit rents in the case of freehold land. Any still existing at the end of 1925 were likely to be manorial (for only then was the preservation of an ancient title probable) and these were classed with those manorial incidents in copyhold land which were extinguished at the end of 1935 at the latest.⁴⁸

2. Rents seck. At common law the relationship of lord and tenant carried with it an automatic right of distress for any rent.⁴⁹ If no such relationship existed, there was no common law right of distress, and consequently an express clause of distress was frequently inserted when reserving the rent. A rent supported by no right of distress was known as a rent seck,⁵⁰ and the name rentcharge was reserved for a rent supported by a power of distress given by the instrument creating the rent or by statute. Rents seck ceased to exist many years ago, for by the Landlord and Tenant Act, 1730,⁵¹ the owners of rents seck were given the same rights of distress as a landlord has against his tenant under a lease; that is to say, the landlord might impound such chattels as were to be found on the land charged with the rent.⁵² Since even this was a far from perfect remedy, a right of entry might also be inserted in the original grant, which would enable the payee to take possession of the land to enforce payment of arrears.⁵³ This in turn was rendered unnecessary by the Conveyancing Act, 1881, the provisions of which (as now re-enacted) are explained below.⁵⁴

3. Legal and equitable rentcharges. A rentcharge is real property, so that both at law and in equity it could be held for any of the usual estates or interests, such as an estate tail⁵⁵ or a term of years.⁵⁶ But now, since 1925, an interest in a rentcharge can be legal only if it is—

(a) in possession,⁵⁷ and

(b) either perpetual or for a term of years absolute.⁵⁸

Further, a legal rentcharge cannot be created at law without certain

⁴⁸ *Ante*, p. 36.

⁴⁹ *Ante*, p. 691.

⁵⁰ Litt. 218 (Latin *siccus* = dry, barren).

⁵¹ s. 5; cf. *Re Lord Gerard and Beecham's Contract* [1894] 3 Ch. 295.

⁵² For distress, see *ante*, p. 691.

⁵³ For an example, see *ante*, p. 138. Such a right of entry was incident to the rentcharge and transferable with the right to receive it.

⁵⁴ *Post*, p. 797.

⁵⁵ *Ante*, p. 787, n. 2; *Chaplin v. Chaplin* (1733) 3 P.Wms. 229.

⁵⁶ *Re Fraser* [1904] 1 Ch. 726.

⁵⁷ As to when a rentcharge is deemed to be in possession, see *ante*, pp. 141, 142.

⁵⁸ L.P.A., 1925, s. 1 (2) (b); *ante*, p. 141.

formalities.⁵⁹ A mere contract for a rentcharge may however create an equitable interest in the usual way.⁶⁰

4. **Rentcharge on a rentcharge.** At common law a rentcharge could be charged only upon a corporeal hereditament. There could be no rentcharge charged upon another rentcharge⁶¹ or other incorporeal hereditament,⁶² since obviously there could then be no right of distress. But this technical obstacle was removed both for the past and for the future by the Law of Property Act, 1925,⁶³ which validates rentcharges charged on other rentcharges and provides special machinery for enforcing payment.

Sect. 2. Creation and Transfer of Rentcharges

1. **Creation.** A rentcharge may be created by statute, by an instrument *inter vivos*, or by will.

(a) *By statute.* A rentcharge may be created by statute, or by virtue of powers conferred thereby.⁶⁴

(b) *By instrument inter vivos.* Apart from statute, a legal rentcharge can be created *inter vivos* only by a deed,⁶⁵ although it has always been possible for a person disposing of land to reserve a rentcharge to himself, without the grantee of the land executing the deed.⁶⁶

An equitable rentcharge may be created merely by contract⁶⁷ or by signed writing.⁶⁸

(c) *By will.* A will now operates only in equity⁶⁹; therefore, if a rentcharge is created or devised by will, the beneficiary gets no legal interest until the personal representatives have assented to the gift. The assent must be in writing, but need not be by deed.⁷⁰

⁵⁹ See *infra*.

⁶⁰ *Jackson v. Lever* (1792) 3 Bro.C.C. 605; cf. *ante*, p. 624.

⁶¹ Co.Litt. 47a; *Earl of Stafford v. Buckley* (1750) 2 Ves.Sen. 170 at 178.

⁶² *Re The Alms Corn Charity* [1901] 2 Ch. 750 at 759.

⁶³ s. 122; *post*, p. 798.

⁶⁴ See, e.g., Improvement of Land Acts, 1864 and 1899, which empowered a landowner (e.g., a tenant for life) to obtain an order from the Ministry of Agriculture, Fisheries and Food charging the land with repayment of money borrowed to finance improvements. These Acts were in general superseded by the Settled Land Acts, 1882 and 1925 (*ante*, p. 282), but the Act of 1864 is still occasionally resorted to because (by s. 59) it may give the rentcharge priority over other incumbrances.

⁶⁵ *Hewlett v. Shippam* (1856) 5 B. & C. 221 at 229. The usual exceptions apply: see L.P.A., 1925, s. 52.

⁶⁶ Co.Litt. 143a.

⁶⁷ *Above*, n. 60.

⁶⁸ L.P.A., 1925, s. 53, replacing Statute of Frauds, 1677, ss. 3, 7.

⁶⁹ L.P.(Am.)A., 1924, Sched. IX; *ante*, p. 535.

⁷⁰ A.E.A., 1925, s. 36; *ante*, p. 537.

2. Words of limitation

(a) *Transfer.* The words of limitation required for the transfer of an existing rentcharge are governed by the ordinary rules for dispositions of land,⁷¹ so that a will made after 1837 or a deed executed since 1925 will pass the whole interest in the rentcharge unless a contrary intention is shown.⁷²

(b) *Creation.* On the creation of a new rentcharge the Wills Act, 1837, s. 28, has been held not to apply; it is confined to the transfer of an existing interest.⁷³ Accordingly the devise of a rentcharge created by the will can take it only for life unless a contrary intention appears.⁷⁴

It is not so clear whether the Law of Property Act, 1925, s. 60,⁷⁵ applies to the creation of rentcharges by deed. Its general form is very like that of the Wills Act, 1837, s. 28; but it applies to every "conveyance of freehold land" executed since 1925, and "conveyance" includes a "mortgage, charge, lease" (all of which create interests *de novo*, although these are not new hereditaments) and "every other assurance of property or of an interest therein by any instrument except a will."⁷⁶ It would be a narrow construction of this definition to hold that a deed creating a rentcharge was not an "assurance of property or of an interest therein," and it is perhaps the more likely prospect that a perpetual rentcharge will now be held to need no special words of limitation when created by deed. If this is wrong, the pre-1926 rules will apply and only a life interest will result unless proper words of limitation are used.⁷⁷

Sect. 3. Means of Enforcing Payment of Rentcharges

A. Rentcharge Charged on Land

There are four remedies available to the owner of a rentcharge if it is not paid. The first remedy, namely, an action for the money, is given by the common law; the other three are given by statute,⁷⁸ thus making unnecessary the express powers of corresponding effect

⁷¹ *Ante*, pp. 50 *et seq.*

⁷² Wills Act, 1837, s. 28; L.P.A., 1925, s. 60 (1).

⁷³ *Nichols v. Hawkes* (1853) 10 Hare 342.

⁷⁴ *Ante*, p. 56.

⁷⁵ *Ante*, p. 56; cf. *post*, p. 828, n. 66.

⁷⁶ L.P.A., 1925, s. 205 (1) (ii).

⁷⁷ The decision in *Grant v. Edmondson* [1930] 2 Ch. 245; [1931] 1 Ch. 1 seems to be founded not on any rule peculiar to rentcharges but on the rule that words of limitation might be incorporated by reference to another instrument: *ante*, p. 53; cf. (1931) 47 L.Q.R. 380 (W. Strachan).

⁷⁸ L.P.A., 1925, s. 121, replacing C.A., 1881, s. 44, and C.A., 1911, s. 6.

which were often inserted in deeds creating rentcharges. These statutory remedies avail only in so far as they might have been conferred by express stipulation,⁸⁰ so that they do not extend the law. They also yield to any contrary intention expressed in the instrument creating the rentcharge.⁸¹

1. Action for the money. A personal action for the rent (as for a debt) will lie against the "terre tenant" (the freehold tenant for the time being of the land upon which the rent is charged), even if the rent was not created by him⁸² and even if it exceeds the value of the land.⁸³ If the land charged has been divided, the terre tenant of any part is liable for the full amount.⁸⁴ A mere lessee for a term of years is not liable,⁸⁵ for the action is the modern successor of one of the ancient real actions,⁸⁶ which lay only against the person seized of the land, i.e., the freeholder in possession. Its "real" nature is attested by the fact that though nominally a personal action it lies against assignees of the land. In truth, "the land is the debtor,"⁸⁷ and the action asserts title to an incorporeal hereditament.

Although the right to sue and the liability to be sued run with the rentcharge and the land, respectively, the benefit of an express covenant for payment does not run with the rentcharge without express assignment.⁸⁸ Thus if a rentcharge created by A in favour of X is conveyed to Y and the land to B, Y cannot sue A on his covenant for payment if B fails to pay: A is liable to Y only while A is entitled in possession, unless Y is an express assignee of X's rights under the covenant to pay. This is another illustration of the medieval view of a rent as a thing rather than a promise.

2. Distress. If an express power of distress is given by the instrument creating the rentcharge, the extent of the right is a question of construction. If there is no such express power, and the rentcharge was created before 1882, the rentcharge owner can distrain upon the land as soon as the rent or any part of it is in

⁸⁰ L.P.A., 1925, s. 121 (1).

⁸¹ *Ibid.*, s. 121 (5), (7).

⁸² *Thomas v. Sylvestre* (1873) L.R. 8 Q.B. 368.

⁸³ *Perwez v. Townsend* (1896) 2 Q.B. 179.

⁸⁴ *Christie v. Barker* (1884) 53 L.J.Q.B. 537.

⁸⁵ *Re Herbage Rents* (1896) 2 Ch. 811. A mortgagee is therefore not liable since 1925, for he holds a mere term of years.

⁸⁶ *Cundiff v. Fitzsimmons* [1911] 1 K.B. 515.

⁸⁷ *Post*, p. 1167.

⁸⁸ *Thomas v. Sylvestre*, *supra*, at p. 372, per Quain J.

⁸⁹ *Grant v. Edmondson* [1931] 1 Ch. 1, where the rentcharge was created before 1925; for rentcharges created after 1925, see Halboury, *2nd ed.*, Vol. 28, p. 242.

For criticism of *Grant v. Edmondson*, see [1931] 47 L.Q.R. 380 (W. Strachan).

Cf. Law Commission Working Paper No. 49, para. 109.

arrears.⁸⁹ If the rentcharge was created after 1881,⁹⁰ then, subject to any contrary intention,⁹¹ the rentcharge owner can distrain as soon as the rent or any part of it is twenty-one days in arrears.⁹²

3. Entry into possession. If a rentcharge was created after 1881⁹³ and shows no contrary intention,⁹⁴ the rentcharge owner may, when the rent or any part of it is forty days in arrears, enter and take possession of the land without impeachment of waste and take the income until he has paid himself all rent due with costs.⁹⁵

4. Demise to a trustee. If the rentcharge was created after 1881⁹⁶ and shows no contrary intention,⁹⁷ the rentcharge owner may, if the rent or any part of it is forty days in arrears, demise the land to a trustee for a term of years, with or without impeachment of waste, on trust to raise the money due, with all costs and expenses, by creating a mortgage, receiving the income or any other reasonable means.⁹⁸ If a rentcharge owner has only an equitable interest, he can grant only an equitable lease to the trustees,⁹⁹ but the estate owner can be compelled to clothe the equitable lease with the legal estate.¹⁰⁰

These last three remedies are expressly excepted from the law relating to perpetuities, together with like powers conferred by any instrument for enforcing payment of a rentcharge.¹ This provision is perhaps not wide enough to cover a clause which is sometimes inserted entitling the rentcharge owner to effect a permanent forfeiture of the land if the rent is unpaid for a specified period, properly called a right of re-entry as opposed to a right of entry.² The general rule that such a power is void unless confined to the perpetuity period³ probably applies in such a case.⁴ However, if the rentcharge was created after July 15, 1964, the rule against perpetuities does not apply to any powers or remedies for recovery or enforcing payment, whether statutory or otherwise.⁵

¹ L. & T.A., 1730, s. 5.

² L.P.A., 1925, s. 121 (7).

³ *Ibid.*, s. 121 (5).

⁴ *Ibid.*, s. 121 (7).

⁵ *Ibid.*, s. 121 (3).

⁶ *Ibid.*, s. 121 (5).

⁷ *Ibid.*, s. 121 (5).

⁸ *Ibid.*

⁹ L.P.A., 1925, ss. 3 (1), 8 (2); S.L.A., 1925, s. 16.

¹⁰ L.P.A., 1925, s. 121 (6) (amended by Perpetuities and Accumulations Act 1964, s. 11 (2)), replacing C.A., 1911, s. 6 (1).

¹¹ *Ante*, p. 138.

¹² *Ante*, p. 247, discussing *Re Hollis' Hospital Trustees & Hague's Contract* [1899] 2 Ch. 340.

¹³ The combined effect of L.P.A., 1925, ss. 4 (3), 121 (6), 162, 190 (8), is not at all plain: see Law Reform Committee's Fourth Report, 1950, Cmd. 18, paras. 42, 43.

¹⁴ Perpetuities and Accumulations Act 1964, ss. 11 (1), 15 (5).

⁹¹ *Ibid.*, s. 121 (2).

⁹² *Ibid.*, s. 121 (5).

⁹³ *Ibid.*, s. 121 (7).

⁹⁴ *Ibid.*, s. 121 (7).

⁹⁵ *Ibid.*, s. 121 (4).

B. Rentcharge Charged on Another Rentcharge

Instead of the statutory remedies of distress, entry into possession, and demise to a trustee, the owner of a rentcharge charged upon another rentcharge may appoint a receiver if the rent or any part of it is twenty-one days in arrear.⁸ The receiver has all the powers of a receiver appointed by a mortgagee.⁹ Thus if Blackacre is charged with a rent of £100 per annum and that rentcharge is charged with a rent of £25 per annum in favour of X, a receiver of the £100 can be appointed by X if the £25 is unpaid for twenty-one days.

There is no provision for any personal action against an assignee of the rentcharge upon which the second rentcharge is charged; but since the latter can be created "in like manner as the same could have been made to issue out of land"¹⁰ it may be that the right to such a rentcharge is implicitly accompanied by the usual common law remedy.¹¹

Sect. 4. Extinguishment of Rentcharges

A rentcharge may be extinguished by release, merger, lapse of time or statutory discharge.¹²

1. **Release.** The owner of a rentcharge may by deed release the land from the rent, either wholly or in part. A partial release may take the form of releasing all of the land from part of the rent,¹³ or releasing part of the land from the whole of the rent.¹⁴ An informal release may be valid in equity.

A limited owner, e.g., a life tenant, of a rentcharge cannot release more than his own interest, except under the powers conferred by the Settled Land Act, 1925.¹⁵ Nor can the owner of a rentcharge charged upon several different properties increase the liability on one of them by releasing another, unless the owner of the property to be burdened concurs in the release.¹⁶ Thus if a rent of £100 is charged on five plots of land owned by five different persons, and one plot is released, the rentcharge owner can recover £100 in respect of the four remaining plots if the owners concurred in the release,¹⁷ but only £80 if they did not concur.¹⁸

⁸ L.P.A., 1925, s. 122.

⁹ *Ibid.*; and see *post*, p. 920, for such a receiver's powers.

¹⁰ L.P.A., 1925, s. 122 (1).

¹¹ Proposals for extinguishment after a fixed period are made in Law Commission Working Paper No. 49, paras. 60, 67.

¹² L.P.A., 1925, s. 70, replacing L.P.(Am.)A., 1859, s. 10. Under the old law the result was to release the whole of the land: Co.Litt. 147b.

¹³ *Anie*, p. 313.

¹⁴ L.P.A., 1925, s. 70, replacing L.P.(Am.)A., 1859, s. 10.

¹⁵ *Price v. John* [1903] 1 Ch. 774. ¹⁶ *Booth v. Smith* (1884) 14 Q.B.D. 318.

2. **Merger.** At common law, if a rentcharge became vested in the same person as the land upon which it was charged, the rentcharge became extinguished by merger, even if this was not the intention.¹⁹ For this to occur, both the rent and the land must have been vested in the same person at the same time and in the same right.²⁰ This automatic rule of the common law no longer applies, for by the Law of Property Act, 1925,²¹ there is to be no merger at law except in cases where there would have been a merger in equity, and the equitable rule is that merger depends upon the intention of the parties.²² Even if an intention that there should be no merger cannot be shown, there will be a presumption against merger if it is to the interest of the person concerned to prevent it.²³

3. **Lapse of time.** If a rentcharge is not paid for twelve years and no sufficient acknowledgment of the owner's title is made, it is extinguished.²⁴

4. **Statutory discharge.** By the Law of Property Act, 1925,²⁵ provision is made for landowners to obtain the discharge of their land from rentcharges on paying to the rentcharge owner a sum representing the capital value as certified by the appropriate Secretary of State.

Sect. 5. Note on the Types of Rent

A summary of the various kinds of rent may be useful.²⁶

1. **Rent service:** this is rent due from a tenant to his lord by reason of tenure. It is now met with only in the case of rent due under a lease or tenancy.

2. **Rentcharge:** this is a periodical sum charged on land independently of any relationship of lord and tenant, supported by a power of distress.

3. **Rent seck:** this was a rentcharge with no power of distress. It is now obsolete.

¹⁹ *Capital and Counties Bank Ltd. v. Rhodes* [1903] 1 Ch. 631 at 652, 653.

²⁰ *Re Radcliffe* [1892] 1 Ch. 227 at 231.

²¹ s. 185, replacing L.P.A., 1873, s. 25 (4).

²² *Jingle v. Vaughan Jenkins* [1900] 2 Ch. 368.

²³ *Re Fletcher* [1917] 1 Ch. 339; but see *Re Attkins* [1913] 2 Ch. 619.

²⁴ Limitation Act, 1939, s. 18 (1); *Shaw v. Crompton* [1910] 2 K.B. 370; *post*, p. 1018.

²⁵ s. 191, extending C.A., 1881, s. 45. Provision is made for payment into court in case of difficulty, e.g., if the owner of the rentcharge cannot be found, or cannot prove his title to it.

²⁶ For a summary of these and many other types of rent, related to economics and the like, see (1974) 232 E.G. 349.

4. **Chief rent**: this was a rent service reserved on the subinfeudation of freehold land in fee simple. The Statute *Quia Emptores*, 1290, for the most part prevented such rents being created.²³ Those previously created mostly fell into abeyance long ago, but some survived in manors where there were freehold tenants. Any manorial chief rents existing in 1925 were extinguished by the end of 1935.²⁴ In some parts of the country, e.g., Manchester, rentcharges are sometimes called chief rents.

5. **Fee farm rent**: this was the name originally used for chief rents; latterly it has been applied to rentcharges reserved on a conveyance in fee simple.²⁵

6. **Quit rent**: this was a rent service payable by a copyholder to his lord, whereby he went quit of his obligation to perform agricultural services; and chief rents were sometimes called quit rents. Quit rents existing in 1925 were extinguished by the end of 1935.²⁶

7. **Rents of assize**: this term is rarely encountered today; it was applied both to chief rents and quit rents.

Part 2

ADVOWSONS

An advowson (from the Latin *advocatio*) is the perpetual right of presentation to an ecclesiastical living.²⁷ The owner of an advowson is known as the patron. When a living becomes vacant, as when a rector or vicar dies or retires, the patron of the living has a right to nominate the clergyman who shall next hold the living. Subject to a right of veto on certain specified grounds, the bishop is bound to institute (formally appoint) any duly qualified person presented. This is a relic of the days when it was common for the lord of a manor to build and endow a church and in return have the right of patronage.

²³ *Anie*, p. 792.

²⁴ *Anie*, p. 793.

²⁵ *Anie*, p. 138; cf. *Cru.Dig.* iii, 274; *Co.Litt.* 143b, n. 5 by Hargrave, disapproving a note to *Bradbury v. Wright* (1781) 2 Doug.K.B. 624 at 627n, which suggests that the rent must be at least one-quarter of the value of the land, and contending that only rent service can be a fee farm rent. *Sed quare*.

²⁶ *Anie*, p. 793.

²⁷ *Co.Litt.* 17b.

It is one of the curiosities of English law that an advowson is real property. There is no physical land of which the patron is owner, but the advowson is an incorporeal hereditament and the patron has an estate in what in law is real property. His estate in an advowson will accordingly pass under a devise of "all my real property."

Under the old law of inheritance advowsons could be subject to dower or curtesy on an intestacy.²⁸ What happens to them under the new law of intestate succession²⁹ is far from clear.³⁰

Legal estates and equitable interests may exist in an advowson as in other real property; thus a life interest in an advowson is necessarily equitable, while a fee simple absolute in possession may exist as a legal estate.³¹

Advowsons may be either appendant, i.e., annexed to a manor, so that the right of presentation will pass to the owner for the time being of the manor; or in gross, i.e., held independently of land. They are subject to a number of important restrictions (in particular, upon their sale) both at common law and by statute,³² which prevents serious abuses of this incursion of property into religion. These are more appropriate to books on ecclesiastical law³³ than to a textbook on real property.

Part 3

TITHES

A tithe was the right of a rector to a tenth part of the produce of all the land in his parish. In some cases a rector was an individual while in others the rectory was vested ("appropriated") in a monastery, who appointed a vicar to perform the necessary

²⁸ *Anie*, p. 518.

²⁹ *Anie*, p. 523.

³⁰ They are disposable by will, and so within Pt. IV of A.E.A., 1925; see s. 52. That makes them subject to a trust for sale on an intestacy (*ante*, p. 523) but their sale is restricted by the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment) Measure, 1923, which in most cases prohibit sale after two vacancies subsequent to July 14, 1924, or after a declaration made under seal by the owners. Vaisey J. described this conflict as "an insoluble problem"; *The Times*, November 10, 1944; but see 1945 Conv.Y.B. 296. A similar problem arises if an advowson is devised to joint tenants or tenants in common. But the Measure does not prevent the sale of land to which an advowson is appendant.

³¹ *Anie*, p. 134; L.P.A., 1925, s. 1, 205 (1) (iv).

³² See n. 30 above.

³³ e.g., Cripps on *Church and Clergy*, 8th ed., 253-263.

had replaced whom, or that they ever had, or ought to have imputed to them, any intention of discharging the outgoing commissioner from liability and taking the incoming commissioner instead as one of their debtors or potential debtors. Nor, for that matter, has anything been put before me to suggest that a new commissioner, when appointed, had any idea that he was agreeing with a large number of Banaban landowners to undertake the obligations of a large number of contracts, and thereby releasing his predecessor in office. There has been nothing to suggest that a new commissioner even learned the names of those with whom he was said to have been contracting, or knew of the changes that occurred by death and the devolution of the land.

Even the 1920 transaction, so much relied upon by Mr. Macdonald, seems to me to point against novation, rather than in its favour. I say this quite apart from Mr. Macdonald's vacillations about the date on which the first novations occurred, ranging from some date between the meeting with the Banabans on October 16, 1920, and December 31, 1920, to the date when the British Phosphate Commissioners first paid the royalties. In the end, that last date was ousted by December 31, 1920, as Mr. Macdonald's first preference; but even if that is right, such uncertainties do not provide favourable soil for a rich crop of novations. What seems to me to be most significant is that at the time of the change-over, as I have mentioned, explanations were given to the employees about their relationship with the company and the British Phosphate Commissioners, and explanations were given to the Banabans about the relationship of the British Phosphate Commissioners with the local administration. Yet not a word seems to have been said about the matter that is relevant to novation, namely, the relationship of the individual Banaban landowners to the company, a body capable of perpetual existence, and the replacement of that body by three individual unincorporated commissioners. If this had been explained to the Banaban landowners and accepted by them, the drawing of the inferences for which Mr. Macdonald contends when each commissioner was replaced by another would present far fewer problems: but that was not the point to which the explanations were directed.

In a sense, one of the strongest points in Mr. Macdonald's favour was one which, as a seasoned advocate, he never made explicit in the somewhat crude form in which I propose to put it, though he saw to it that its presence could not pass unnoticed. Bluntly stated, it is that it would be unfair and wrong for the present commissioners to escape liability by reason of their unincorporated condition and the failure of the governments to operate any proper machinery for ensuring that each generation of commissioners was in law not only entitled to the benefits of the company's undertaking but also subject to the burdens. Therefore the court ought to strain to find a series of novations so as to bring about the proper result.

With the whole of that proposition up to the word "therefore" I wholeheartedly agree: but with the "therefore" and what follows I cannot agree, at any rate to the extent that the straining by the court should achieve success. It will be remembered that choice in of the

indenture of December 31, 1920, provided for the making of vesting declarations when one commissioner replaced another. Yet neither this nor any other machinery for ensuring continuity in a legal sense seems to have been operated by the governments or the commissioners. I am indeed reluctant to say that the present commissioners should be able to escape liability on the ground that nothing had been done by them or their governments which would expose them to liability for the acts and omissions of their predecessors. Nevertheless I cannot permit that reluctance to induce me to hold that despite facts so unpromising for a massive series of novations, these novations should still be inferred. In my judgment there have been no novations which would make the present British Phosphate Commissioners liable to the plaintiffs.

(6) *Benefit and burden.* I next consider the principle that he who takes the benefit of a transaction must also bear the burden. As might be expected, this was the subject of extensive argument, and much discussion of the authorities; and I must consider it at length. There was general agreement that in a number of respects the present case did not fall within any of the authorities; and one of the many questions was whether the principles to be found in the authorities were properly applicable to this case, and what those principles were.

The basic principle has plainly been expanding. Its origin appears in at least two forms: see *Megarry and Wade, The Law of Real Property*, 4th ed. (1975), p. 750. One form of the principle is as a technical rule relating to deeds. If a person is named as a party to a deed, but does not execute it, the deed will nevertheless be held to bind him if he knowingly takes the benefit of it. In that form, it is not much more than part of a rule for determining who are to be treated as being parties to a deed. In another form, the rule is that if by an indenture to which A and B were the only parties A granted land to B for life with remainder to C, on terms that the land was to be held subject to certain conditions, then if C entered after B's death and took the land by virtue of the indenture, he thereupon became bound by the conditions, even though he was no party to the indenture. This is the instance given in a passage in Litt. 374 (and in Co.Litt. 230b) to which reference is made in the cases. In each form, it will be observed, the principle applied only to a specified person, either named as a party to the deed, or named (or perhaps ascertainable) as the grantee of an estate.

Side by side with these technical instances, and probably underlying them, was the simple principle of ordinary fairness and consistency that from the earliest days most of us heard in the form "You can't have it both ways," or "You can't eat your cake and have it too," or "You can't blow hot and cold." The thought also appears in Latin, in a maxim that I shall mention in due course. With such foundations or parallels, it is not surprising that the principle has been expanding in its scope; and one of the questions is how far it can properly be carried in transcending technicalities. Before I turn to the cases, it is convenient to consider certain aspects of the doctrine that have been settled or are emerging. By no means all of them are clear.

(a) CONDITIONAL BENEFITS AND INDEPENDENT OBLIGATIONS. One of the most important distinctions is between what for brevity may be called conditional benefits, on the one hand, and on the other hand independent obligations. An instrument may be framed so that it confers only a conditional or qualified right, the condition or qualification being that certain restrictions shall be observed or certain burdens assumed, such as an obligation to make certain payments. Such restrictions or qualifications are an intrinsic part of the right: you take the right as it stands, and you cannot pick out the good and reject the bad. In such cases it is not only the original grantee who is bound by the burden: his successors in title are unable to take the right without also assuming the burden. The benefit and the burden have been annexed to each other ab initio, and so the benefit is only a conditional benefit. In the other class of case the right and the burden, although arising under the same instrument, are independent of each other: X grants a right to Y and by the same instrument Y independently covenants with X to do some act. In such cases, although Y is of course bound by his covenant, questions may arise whether successors in title to Y's right can take it free from the obligations of Y's covenant, or whether they are bound by them under what for want of a better name I shall call the pure principle of benefit and burden.

(b) QUI SENTIT COMMODOUM SENTIRE DEBET ET ONUS. This ancient maxim, to be found in 2 Co. Inst. 489, bears an uncertain relationship to the principle under discussion. In spirit it is the same: yet the instances of its operation given in the books are curiously restricted and hazardous: see *Broom's Legal Maxims*, 10th ed. (1939), pp. 482-486. Cases of burdens annexed to property binding those who take it are given as instances of the maxim, and so are cases of election. I shall not attempt to explore these thickets. In the case of burdens attached to land, such as mortgages or easements, it hardly seems necessary to resort to any doctrine about benefit and burden: if you take something that has a burden annexed to it, you have to take it as it is, burden and all. Again, you cannot pick out the good and leave the bad. If more Latin is required, transit terra cum onere will do. The parallel between this head and conditional benefits under the previous head is obvious. The only essential difference seems to be that where there is a burden which in its nature is annexed to property there will be no initial question of determining whether or not the burden is a condition of the benefit. In neither case is there any question of applying any pure principle of benefit and burden: each in essence consists merely of having to take a thing as it stands. Perhaps I should add that there may be some ambiguity about the word "burden." Sometimes it is used in the sense of burdens annexed to property, such as mortgages, and sometimes it is used in the sense of some onerous but independent obligation which under the pure benefit and burden principle may or may not bind successors in title. In most cases the context will make the sense clear. I do no more than indicate a possible source of misunderstanding of what has been said in some of the cases and elsewhere.

(c) OBLIGATORY AND OPTIONAL. In some cases the principle of benefit and burden appears to operate in an obligatory form. In the two technical instances that I have given, once the benefit has been taken under the deed, or once the estate has been claimed under the indenture, the burdens are as binding as if the taker of the benefit or estate had executed the instrument. In the case of conditional benefits, the result seems to be the same: take the benefit, and at once the burdens bind you. But in the case of independent obligations, the pure principle of benefit and burden (if it applies at all) seems at least in some cases to operate in an optional manner. Thus if the benefit is a licence to cross a neighbour's land and the burden is the making of an annual payment, an assignee of the licence appears to be able to resist claims for future payments if he ceases to enjoy the licence. In such a case, he can say that he has never become contractually bound to make the payments, and that he is taking no benefit for the period to which the payments relate. Plainly there is a great difference between saying "As soon as you accept any benefit you become subject to the whole of the burdens, past, present and future," and saying "As long as you continue to accept the benefit you must continue to bear the burden." Whether in the latter case there would be any right to resume enjoying the benefit and bearing the burden after there has once been a discontinuance I do not know.

(d) CONTINUING AND UNITARY BURDENS. The previous head leads to the present head. In some cases the burden may be a continuing burden, such as an obligation to pay an annual sum. In other cases the burden may be a future unitary burden, such as an obligation to pay compensation for damage, or to restore land after opencast working; and of course there may be many variants and mixtures of burdens. In the case of continuing burdens, the pure principle of benefit and burden seems to apply in the optional form discussed under the previous head. But in the case of unitary burdens, how does that principle apply? Does every successor in title to the benefit become liable for the whole of the burden when it accrues, however brief his enjoyment of the benefit? If not, how is the burden to be borne?

(e) RELATIONSHIP TO ASSIGNMENT OF BENEFIT. It was, of course, accepted on all hands that the burden of positive covenants will not run with the land; and if matters such as novation are left on one side, it is clear that in general contractual burdens are not assignable, though contractual benefits are. How, then, does the principle that he who takes the benefit must bear the burden fit in with cases where benefits such as the right to receive certain payments under a contract have been assigned but the assignee of those benefits has been held or assumed to take free of the burdens under the contract?

(f) ACTIVE AND PASSIVE. The principle in its pure form may operate in two different ways; and during the argument these became known as the "active" and the "passive" forms. The active form looks to the future. X is seeking to exercise some right which has been assigned to him. If the doctrine applies, he can exercise the right only if he accords

the burdens; he has no choice. The passive form looks to the past. X has done some act, such as entering on Y's land and damaging it, and he is being sued by Y. X may then have a choice. He may claim to be an assignee under a grant of the right to do the act, in which case, if the doctrine applies, he must bear the burdens imposed by the instrument creating the right, e.g., an obligation to pay compensation. Alternatively, he may refrain from relying on the instrument, and instead accept liability on the footing that his act was unauthorised. If the rate of compensation and the measure of damages at common law differ, the active and passive forms may thus operate differently, though I do not know that there is any great difference in principle between them.

(g) LEGAL AND EQUITABLE. It seems clear that the doctrine may operate not only at law, as in the two technical instances that I have given, but also in equity, as appears from the cases.

I think that I have said enough about some of the categories and problems of this branch of the law to make it desirable to turn to the authorities. They fall into three groups. In the first, the issue was on the pure principle of benefit and burden. The burden was held to have passed not because the right granted was held to be conditional upon assuming the burden, or to be qualified by it, but because of the principle that he who takes the benefit must bear the burden. In the second group of cases the issue has been whether or not the right granted was a conditional or qualified right; in all the cases save one the right has been held to be conditional, and the claimant has succeeded. The third group of cases consists of cases cited on the relationship that I have mentioned between the principle of benefit and burden, and the assignment of benefits. However, it will be seen on examination that there are cases in this category which really belong to the second group.

The leading case in the first group is the well-known decision of Upjohn J. in *Halsall v. Brizell* [1957] Ch. 169. In that case the owners of an estate laid it out in 174 building plots, and formed roads and sewers, a sea wall and a promenade and so on; and in disposing of the building plots the developers, as I shall call them, retained the roads, sewers, sea wall and promenade. A deed of covenant made between the developers, as trustees for the parties to the deed, and the owners of plots made a number of provisions for the regulation of the estate. All this was done in 1851, in the spacious conveyancing language of the day; I shall try to put matters briefly. One of the provisions was that each party to the deed, and his successors, should contribute and pay a due and just proportion, in respect of his plot of land, of the expenses of maintaining the roads, sewers, promenade and sea wall; and this was supported by a power of distress for the developers and their successors. The deed also provided machinery for the proprietors of plots to determine the expenses in general meeting, with provisions for voting and so on.

The litigation arose in respect of a house on one plot which, without being structurally divided, was let to five separate tenants; and much turned on a resolution passed at a general meeting of plot-holders in 1950. That resolution

calls for every house divided into two or more separate flats or dwellings, with a limit of three calls per plot. The defendants, who were executors of the plot owner who had divided the house, duly paid single calls in respect of the house. But they refused to pay the two additional calls each year which the plaintiffs (who were the present trustees of the deed) had demanded in accordance with the resolution. The plaintiffs did not sue for payment, but instead took out an originating summons which raised two main questions: first, whether the deed was valid and effectual at all in so far as it purported to make the successors of the original contracting parties liable to pay calls; and second, if it was, whether the 1950 resolution imposing additional calls was a valid resolution.

Upjohn J. answered the second question by holding, for reasons that I need not discuss, that the resolution was ultra vires and void. That by itself sufficed to dispose of the case: and a declaration that the resolution was ultra vires and void was accordingly made. The trustees therefore failed in their claim, for the single calls had been paid, and only the liability for the additional calls was in issue. But before reaching this conclusion, the judge had considered the first question that was before the court; and of course it is this question that is important in the present case. On this, the judge said, at p. 182, that it was plain that the defendants "could not be sued on the covenants contained in the deed for at least three reasons." These were that a positive covenant such as that in question did not run with the land; that the provisions for the payment of calls plainly infringed the rule against perpetuities; and that it was conceded that the provision for distress, not being annexed to a rentcharge, was invalid.

On these last two points I may mention, first, that the case seems to have escaped notice in books on perpetuities. Second, on rentcharges, there is an interesting contrast with *Morland v. Cook* (1868) L.R. 6 Eq. 252. In that case, a covenant by various landowners to share the expenses of maintaining a sea wall was held to be enforceable at law against successors in title of the covenantors. The reason subsequently given by the Court of Appeal was that, although framed as a covenant, the obligation was really a rentcharge; and this conclusion was reached because the covenant was to pay the money "out of the said lands"; see *Austerberry v. Oldham Corporation* (1885) 29 Ch.D. 750, 774, 775, 782.

Having held that the defendants could not be sued on the covenants of the deed, Upjohn J. continued [1957] Ch. 169, 182:

"But it is conceded that it is ancient law that a man cannot take benefit under a deed without subscribing to the obligations thereunder. If authority is required for that proposition, I need but refer to one sentence during the argument in *Elliston v. Reacher* [1908] 2 Ch. 665, 669, where Lord Cozens-Hardy M.R. observed: 'It is laid down in *Co.Litt.* 230b, that a man who takes the benefit of a deed is bound by a condition contained in it, though he does not execute it.' If the defendants did not desire to take the benefit of this deed

to pay the obligations thereunder. But, of course, they do desire to take the benefit of this deed. They have no right to use the sewers which are vested in the plaintiffs, and I cannot see that they have any right, apart from the deed, to use the roads of the park which lead to their particular house, No. 22, Salisbury Road. The defendants cannot rely on any way of necessity or on any right by prescription, for, the simple reason that when the house was originally sold in 1931 to their predecessor in title he took the house on the terms of the deed of 1851 which contractually bound him to contribute a proper proportion of the expenses of maintaining the roads and sewers, and so forth, as a condition of being entitled to make use of those roads and sewers. Therefore, it seems to me that the defendants here cannot, if they desire to use this house, as they do, take advantage of the trusts concerning the user of the roads contained in the deed and the other benefits created by it without undertaking the obligations thereunder. Upon that principle it seems to me that they are bound by this deed, if they desire to take its benefits."

It will be seen that this passage is founded on a concession by counsel. Upjohn J. asked, at p. 180: "Is there not a rule that a person who accepts the benefit of a deed must also accept the burden of it?" Counsel for the defendants replied: "Yes, that is conceded"; and he cited *Norton on Deeds*, 2nd ed. (1928), p. 26, and the observation in *Elliston v. Reacher* which was cited in the passage of the judgment that I have just read. Before I go any further, I think I should say something about this observation and its sequel.

It is obvious that there is a considerable difference between a rule which applies only to a specified person who is named as party to a deed or as grantee of an estate, and who takes a benefit under the deed or takes the estate, and a rule which applies to "a man" or "a person" who takes the benefit of a deed. In the former case, the rule applies only to a persona designata who is within the contemplation of the other parties to the deed as being intended to take the benefits or the estate under it and bear the burdens of it: the doctrine simply cures the defect of that person not having bound himself by executing the deed. (It is old law that a person who is not a party to a deed may nevertheless bind himself by a covenant in the deed if he executes it: *Salter v. Kidgely* (1689) Carth. 76.) In the latter case "a man" or "a person" may, if taken literally, be anyone in the world, and outside the contemplation of the parties to the deed, though some limitation must no doubt be implied.

With that in mind, it seems plain that the interlocutory observation of Sir Herbert Cozens-Hardy M.R. in *Elliston v. Reacher* [1908] 2 Ch. 665, 669, the concession by counsel in *Halsall v. Brizell* [1957] Ch. 169, and what Upjohn J. said in that case, all involve a substantial expansion of the principle. The proposition laid down in Co.Litt. 230b (and Litt. 374, which must be read with it), was not in terms of "a man" or "a person," but merely in terms of the grantee of an estate. Similarly, the passage in *Norton on Deeds*, 2nd ed. (1928), p. 26, cited in counsel's concession was

merely in terms of a party to a deed who does not execute it. Cozens-Hardy M.R.'s observation was, indeed, an interlocutory observation not repeated in his judgment; and one must bear in mind the warning of Viscount Simon L.C. that such observations are not judicial pronouncements, and decide nothing, even provisionally, but are merely made in order to elucidate the argument or point the question or indicate what needs investigation: *Practice Note* [1942] W.N. 89. Furthermore, the judgment in *Halsall v. Brizell* was not a reserved judgment; indeed, I observe, a little wistfully, that the case was argued and decided in a single day.

Let it be accepted that a degree of historical frailty can be detected in the forensic process in this sphere, and let it also be accepted that, at any rate on one view, what Upjohn J. said on the point was not necessary for his decision and forms no part of his ratio decidendi. Accept all that, and there still remains the fact that, quite apart from other authorities, the propositions enunciated by Cozens-Hardy M.R. and Upjohn J. seemed right to them. Couple that with the simple principle of fairness and consistency that I have mentioned, and it will be seen that there is good reason why I should be ready to adopt and apply the broader proposition that has emerged from the technicalities of past ages. At the same time, in considering the application of the expanded doctrine to the case before me, it will be necessary to consider what are the true limits of that doctrine. With that, I turn to the only other case in this first group.

December 2. MEGARRY V.-C. continued:

In *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, the owner of Blackacre erected a building with foundations which trespassed to a small extent on Whiteacre. The owners of Blackacre and Whiteacre then orally agreed that the trespassing foundations of Blackacre could remain but that Whiteacre should have a right of way over Blackacre. The agreement was never registered as a land charge, and Blackacre passed to purchasers. Difficult questions of registration arose, as well as questions of estoppel. But the point with which I am concerned was that which appears at p. 394. There, Lord Denning M.R. applied the principle that he who takes the benefit must also take the burden, referring with approval to *Halsall v. Brizell* [1957] Ch. 169. "So long as" the owners of Blackacre took the benefit of having foundations which reached into Whiteacre, he said, they must shoulder the burden of the right of way over Blackacre: "so long as" the owner of Whiteacre took the benefit of the right of way, he must allow the trespassing foundations of Blackacre to remain. Danckwerts L.J. took a similar view, at pp. 399, 400, whereas Winn L.J. put the emphasis on estoppel.

The words "so long as" plainly appear to indicate that with continuing benefits and burdens on both sides the burdens could be escaped at the price of ceasing to enjoy the benefits. A similar view appeared in *Hopgood v. Brown* [1955] 1 W.L.R. 213, 226; but that was a case of reciprocal licences, and I think that Sir Raymond Evershed M.R. was putting matters more on the basis of estoppel than on a basis of benefit and burden. However, the point seems to have been explicitly decided by the Supreme Court of Canada in *Parkinson v. Reid* (1966) 56 D.T.R. (241).

315. There, in the absence of privity either of contract or of estate, it was held that defendants who derive title under an instrument which conveyed land with the right to use the plaintiff's wall but subject to certain repairing obligations were not liable on those obligations after they had ceased to use the wall. Before I leave *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 I should add that it makes it clear that the principle applies in the case of parol agreements as well as for deeds, and that in that case the principle was operating in equity, rather than at law.

I have now considered the only cases cited which seem to me to depend on the pure principle of benefit and burden. I must next turn to the second group of cases that were cited on this topic, being those which depended on whether or not the benefit was a qualified or conditional benefit. I will first take *Aspden v. Seddon*. This was litigated in two stages: *Aspden v. Seddon* (1875) 10 Ch.App. 394 was in Chancery, and *Aspden v. Seddon* (No. 2) (1876) 1 Ex.D. 496 was at common law. The facts are a little complicated, but in essence they were as follows. A landowner conveyed part of his land to a trustee for a company, excepting and reserving the mines and minerals and the right to work them. The exception and reservation ended with the words "so that compensation in money be made" by the landowner and his successors "for all damage that shall be done to the erections on the said plot by the exercise of any of the said excepted liberties, or in consequence thereof." There was also an express covenant for the landowner and his successors to pay compensation for damage to buildings caused by mining.

As required by the conveyance, the company erected a cotton mill on the land. There was then a devolution of the landowner's adjoining land and his mining rights upon the Seddons, and also a devolution of the mill upon Aspden. The Seddons worked the minerals and damaged the mill, whereupon Aspden sued them in Chancery for an injunction to restrain the working, and damages. This claim failed on the ground that the conveyance gave the right to the Seddons to let down the surface and damage the mill on paying compensation, and that the claim for damages was a matter for the courts of law: the case, I may say, was decided before the Judicature Act 1873 came into force.

In *Aspden v. Seddon* (No. 2), 1 Ex.D. 496, the litigation arose on a case stated by an arbitrator, the main question being whether Aspden were entitled to recover compensation from the Seddons. Both in the Exchequer Division and in the Court of Appeal it was held that the answer was Yes. The essence of the reasoning was that the only right to let down the surface that the Seddons had was a right sub modo, or a conditional or qualified right, the condition being the payment of compensation. James L.J., at p. 509, did not think that the law of England could be in such a state that the defendants could justify a trespass in opening a mine under an authority in which there was a qualification, but refuse to pay anything in the way of compensation under the terms of that qualification. He held it plain that "a man exercising the right is to pay the compensation . . . the simple thing is that the man who has exercised the right is to pay for the damage." Mellish L.J., at p. 509, treated

a right to let down the surface subject to the condition. It could then be said, "You shall let down the surface, but you shall only do that in modo that the man, whoever does let down the surface by getting minerals, shall pay compensation." In the court below Bramwell B., at p. 504, made it explicit that a remedy lay at common law for the compensation.

Westhoughton Urban District Council v. Wigan Coal and Iron Co. Ltd. [1919] 1 Ch. 159 does not seem to me to add much to *Aspden v. Seddon*. The essential point was that what had been granted was merely a qualified right to work the minerals under certain land, the qualification being an obligation to pay compensation for damage done. The qualification appears at p. 160; and see also at pp. 171, 174. There was also a covenant by the grantees not to do damage, and to make it good if they did. The grantees worked the minerals and did damage, and were sued by lessees of the land who derived title under the grantor of the mining rights. The lessees were held to be entitled to damages against the grantees. Although they could not claim as assignees of the covenants, they were entitled as lessees to have their land supported except so far as this right had been taken away by the grant of mining rights. The grantees could therefore either rely on the grant and comply with its obligation to pay compensation, or else abstain from relying on it and pay damages at common law. For things past, the grantees had this choice; but for the future the lessees could force the grantees to rely on their grant by claiming an injunction against them: see *per* Sir Charles Swinfen Eady M.R. at pp. 171, 172. From p. 177 it appears that the order of the Court of Appeal included liberty to apply for an injunction.

I pause to emphasise that in these cases there is plainly an initial question of construction. If an instrument grants rights and also imposes obligations, the court must ascertain whether upon the true construction of the instrument it has granted merely qualified or conditional rights, the qualification or condition being the due observance of the obligations, or whether it has granted unqualified rights and imposed independent obligations. In construing the instrument, the more closely the obligations are linked to the rights, the easier it will be to construe the instrument as granting merely qualified rights. The question always must be one of the intention of the parties as gathered from the instrument as a whole. It is familiar law that in leases the tendency is to construe the covenants of the lessor and the covenants of the lessee as being independent of each other, so that the observance of the one is not conditional upon the observance of the other. Such covenants, of course, usually appear separately and distinctly in the lease.

In considering this question, the learning of Mr. Macdonald took me to a decision of the House of Lords on the point, reported only as a note to another case. The decision is *Chamber Colliery Co. Ltd. v. Twyford* (1893) [1915] 1 Ch. 268n. In that case a grant of mining rights was made, the grantees doing as little damage as the nature of the case would admit of, and making satisfaction to the grantors for all unavoidable damage by making annual payments at a certain rate per acre. There was also a covenant by the grantees that if any damage to any buildings

for it to the grantors over and above the annual payments. The proceedings were between parties who derived title from the grantors and grantees respectively; and the plaintiff claimed damages and an injunction in respect of damage to his land and buildings caused by mining. It was argued that the covenant for making full satisfaction for damage to buildings was a personal covenant which could not run with the land, and that it could not be treated as a limitation or qualification of the right to work the mines.

In a speech with which Lord Herschell L.C., Lord Macnaghten and Lord Morris simply concurred, Lord Watson rejected this contention. He said, at p. 273, that the covenant did not profess to impose a burden running with the land.

"It is an inherent qualification of the coal owner's licence to work with the effect of letting down the surface, and provides that he shall not do so except upon the condition of compensating the owner for the time being of buildings which are injured by his operations. I do not think it is open to question that what is in form a covenant may nevertheless appear from the whole of the provisions of the instrument to be intended to operate as a condition also."

From the short report it is not very easy to see the exact grounds on which this conclusion was based. One thing seems plain: the opposite conclusion would have produced strange results. The provision for making satisfaction for damage to the surface by means of annual payments was plainly worded so as to qualify the right to mine, much as in *Aspden v. Seddon* (No. 2), 1 Ex.D. 496. If the covenant to make full satisfaction for damage to buildings had been held to be an independent covenant, the right to mine would be in a curious state of being qualified as to compensation for one form of damage and unqualified as to another. That curiosity, and the express references to the payments under the covenants being "over and above" the annual payments to be made under what were plainly words of qualification, seem to me to provide ample grounds for holding that both provisions for compensation were intended to qualify the right to mine. In the phrase of Mr. Browne-Wilkinson, the words of the grant showed that the covenant was intended to be an extension of the condition. Whether the House was actuated by reasons of this sort I do not know; but at least it seems possible, and, indeed, probable.

The last case in this second group is *Radstock Co-operative and Industrial Society v. Norton-Radstock Urban District Council* [1967] Ch. 1094; [1968] Ch. 605. This concerned a sewer laid in the bed of a river. Predecessors in title of the owner of part of the bed had granted a lease to predecessors in title of the sewage authority, authorising those predecessors to lay, maintain and use the sewer. The lease contained various covenants by the authority's predecessors with the lessor, including a covenant in clause 14 not to interfere with the flow of the river. (I may say that although the report at first instance includes only an extract from clause 14 (see [1967] Ch. 1094, 1096), the clause appears in full at [1968] Ch. 605, 610.) In time the sewer became exposed, and caused eddies which eroded the banks and did other damage; and the owner then sued the authority, inter alia, on the covenant. On this

point, the issue was whether the authority had merely a qualified right to maintain the sewer, qualified by the obligation of clause 14 not to interfere with the flow of the river, or whether the right was unqualified and clause 14 imposed an independent obligation.

At first instance, Ungood-Thomas J. held, at p. 1120, that the latter was the correct view, and on appeal Harman and Russell L.J.J. agreed, at pp. 628, 632: in the words of the former, "this covenant is not and cannot be construed as a condition." The dissent of Sachs L.J. was not on this point. The conclusion that clause 14 did not qualify the rights of sewer granted by the lease was in all cases reached as a matter of construction in statements that were brief and emphatic, though Ungood-Thomas J. did discuss and distinguish *Westhoughton Urban District Council v. Wigan Coal and Iron Co. Ltd.* [1919] 1 Ch. 159, *Chamber Colliery Co. Ltd. v. Twyford* [1915] 1 Ch. 268n. was not cited, and Mr. Macdonald contended that if it had been the decision on this point would have been different. However, the distinctions between the two cases on this point are too obvious to require mention. I should be astonished if any of the judges in the *Radstock* case would have felt the least surprise at the proposition that what is in form a covenant may nevertheless appear from the instrument as a whole to be intended to operate as a condition also. Unhappily Ungood-Thomas J. and Harman L.J. are no longer able to speak for themselves; but, if asked, I would have expected them to say: "Of course; but what is there in this instrument to make that appear?" I will venture no hypothetical reply for Russell L.J., who, translated, is happily still with us; but I doubt very much if his answer would differ.

It is important to observe that this aspect of the *Radstock* case seems to have been argued and decided solely on the question whether the right to maintain the sewer was a qualified right, or was unqualified. There does not seem to have been any argument on the further questions that might arise if, as was the case, the right was held to be unqualified, namely, whether the pure principle of benefit and burden could be applied so as to make the authority liable. There is a sentence in the judgment of Ungood-Thomas J. [1967] Ch. 1094, 1119, which can be read as an oblique reference to the principle; but there is no reference in either court to *Halsall v. Brizell* [1957] Ch. 169 or to *F. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, then very recently decided.

I now come to the third group of cases, those cited on the relationship of the pure principle of benefit and burden to the assignment of benefits. As I have already indicated, the point is that if the benefit and burden doctrine is to be given the full width claimed for it, questions must arise on the many instances of assignees of the benefit of a contract not being bound by the burdens of that contract. Mr. MacCrimmon relied on *Cox v. Bishop* (1857) 8 De G.M. & G. 815, *Bugot Pneumatic Tyre Co. v. Clipper Pneumatic Tyre Co.* [1902] 1 Ch. 146, and *Barker v. Stickney* [1919] 1 K.B. 121. To these Mr. Macdonald replied with *Werderman v. Société Générale d'Electricité* (1881) 19 Ch.D. 246, *Dansk Røktstiftelse Syndikat Aktieselskab v. Snell* [1908] 2 Ch. 127, and *May v. Belleville* [1905] 2 Ch. 605.

I do not think that I need examine these cases in detail. *Cox v. Bishop* holds that an equitable assignee of a lease who takes possession of the land is not liable to the lessor on the covenants of the lease. The case was argued and decided on privity, and not on any principle of benefit and burden. The *Bagot* case [1902] 1 Ch. 146 concerned a licence to use patents which had been assigned in equity. The benefit and burden principle was argued in an attempt to make the assignees liable on the burdens of the licence, but Vaughan Williams L.J. rejected it, relying on *Cox v. Bishop*; see at pp. 156, 157. Romer L.J. briefly cited *Cox v. Bishop* as showing that the plaintiffs had no special right to sue the defendants merely because the latter were equitable assignees (see at p. 161), and Cozens-Hardy L.J. simply expressed his agreement. This appears to be the strongest authority against the existence of any pure benefit and burden principle at all, although of course the authorities have not stood still since 1901. In due course I must return to this case.

In *Barker v. Stickney* [1919] 1 K.B. 121 the author of a book assigned the copyright to a publishing company, which covenanted to pay him a royalty. The copyright was later assigned to another company which succeeded to the publishing business, but the author was held not to be entitled to recover royalties from that latter company. The case was argued on variant forms of there being some charge or burden that was attached to the copyright assigned, or ran with it, but the Court of Appeal rejected them all. The case is a warning to authors, and others; and it accounts for the advice given to authors to see that they merely give the publishers a right to publish that is conditional upon the payment of royalties: see *per* Scrutton L.J., at p. 133. The case was decided purely as a matter of construction of the initial assignment (see *per* Bankes L.J., at p. 124 and *per* Warrington L.J., at p. 129), though Scrutton L.J. did also consider the question of covenants said to run with goods. The case is no authority on the pure benefit and burden principle, for that does not appear to have been argued; but the field is one in which that principle might well be applied so as to produce a more just result.

I turn to *Werderman's* case, 19 Ch.D. 246, a decision that was distinguished in both the *Bagot* case [1902] 1 Ch. 146 and *Barker v. Stickney* [1919] 1 K.B. 121. A patentee assigned his patent by an indenture which provided for certain payments to be made to him. The assignees assigned their rights to a company, and the patentee then claimed the payments from the company. The Court of Appeal held that the assignment made it plain that the parties intended the liabilities to attach to the patent itself. Lindley L.J., at p. 257, regarded the case as being almost the same as the dissolution of a partnership with an assignment of assets charged with an annuity to the outgoing partner; and in the *Bagot* case [1902] 1 Ch. 146, 157 Vaughan Williams L.J. said that the *Werderman* case was one of a charge or incumbrance imposed on the property. The *Dansk* case [1908] 2 Ch. 127, too, was a case about an assignment of patents; and Neville J. held that on the true construction of the assignment the vendor had a lien on the patents for the royalties, so that an assignee from the purchaser must pay the royalties to the vendor. The last three cases all seem to fall within the principle of the second

group of cases, concerned with whether or not the right granted was a qualified or conditional right.

May v. Belleville [1905] 2 Ch. 605 was rather different. A man sold part of his land, the contract providing for him to reserve rights of way over the land sold. The conveyance contained an appropriate reservation, but the purchaser did not execute it, though he took possession of what he had bought. The question was whether the purchaser and his successors were bound by the reservation. Such a case seems to me to fall squarely within one of the two old versions of the benefit and burden principle that I have mentioned, namely, that if a person is named as a party to a deed but does not execute it, the deed will nevertheless be held to bind him if he knowingly takes the benefit of it. Such a liability was held to exist at law at least as early as *Brett v. Cumberland* (1619) Cro.Jac. 521. However, none of this seems to have been argued, and Buckley J. held that the purchaser was bound in equity to give effect to the terms on which he obtained possession, and his successors in title were in no better case.

Before I go any further, I must return to the *Bagot* case [1902] 1 Ch. 146, and consider how far it is an authority against the pure benefit and burden principle. The case initially came before Kekewich J.: [1901] 1 Ch. 196. Before him, it was argued on contract and on whether the licence had had liabilities attached to it; and *Werderman's* case, 19 Ch.D. 246, was distinguished. The benefit and burden principle did not appear until the case reached the Court of Appeal. There it was presented on the footing that *Werderman's* case was a clear authority which supported it: see [1902] 1 Ch. 146, 150, 151. At p. 156 Vaughan Williams L.J. said that it had been contended that the defendants were directly liable to the plaintiffs, not at law but in equity, because they had had the benefit of the licence and had been acting under it.

"They have, it is said, received the benefit which has resulted from a contract to which they were not parties, and they have thereby taken upon themselves the burden of that contract. To my mind that has never been the law."

He then said that it seemed to him that this question had been clearly decided in *Cox v. Bishop*, 8 De G.M. & G. 815 (a case, it will be remembered, which was also one of an equitable assignee), and after citing from the judgment of Knight Bruce L.J., he said that that principle applied in the present case and in all similar cases. Romer L.J. did not discuss the benefit and burden argument, though he did say, at p. 161, that the fact that the defendants were equitable assignees "would not of itself give the plaintiffs any special right to sue the defendants, as was pointed out in *Cox v. Bishop*." Cozens-Hardy L.J. simply expressed his agreement, and added nothing.

I do not think that the *Bagot* case requires me to reject the pure benefit and burden principle. Only one Lord Justice really dealt with it; his judgment did not explore it in any detail; the argument on the point seems to have been brief, and it cited no authority; and, of course, *Italsall v. Brizell* [1957] Ch. 169 and *E. R. Ives Investment Ltd. v. High* (1967) 2 Q.B. 779 lay in the future. It is they and not the instrument of

Vaughan Williams L.J. in the *Dagot* case [1902] 1 Ch. 146, 156 that I think I should follow. The other assignment cases do not seem to me to provide any authority against the principle. A court is not to be treated as rejecting an argument that was never put before it, particularly when that argument rests upon a doctrine that is in the course of evolution.

I emerge from a consideration of the authorities put before me with a number of conclusions and a number of uncertainties. First, for the reasons I have given, I think that there is ample authority for holding that there has become established in the law what I have called the pure principle of benefit and burden. Second, I also think that this principle is distinct from the conditional benefit cases, and cases of burdens annexed to property. Although language speaking of benefit and burden is sometimes used in the latter classes of case, I do not think it is really apt, and it is liable to confuse. In such cases the rule is really a rule of "all or none," an inelegant but convenient expression that may be used for brevity. A burden that has been made a condition of the benefit, or is annexed to property, simply passes with it: if you take the benefit or the property you must take it as it stands, with all its appendages, good or bad. It is only where the benefit and the burden are independent that the pure principle of benefit and burden can apply.

Third, it is a question of construction of the instrument or transaction, depending on the intention that has been manifested in it, whether or not it has created a conditional benefit or a burden annexed to property. If it has, that is an end of the matter: if it has not, and the benefit and burden are independent, questions of the pure principle of benefit and burden may arise. On the question of construction, there is a possible parallel in the case of two or more things given by a will to the same person, e.g. a leasehold house and its contents: if the will is construed as making a single gift of the two things, as distinct from two separate gifts, the legatee cannot take one and reject the other, as he might wish to do if the lease is onerous.

Fourth, the application of the benefit and burden principle will normally come later than the question of construction. If the initial transaction has created benefits and burdens which, on its true construction, are distinct, the question whether a person who is not an original party can take one without the other will *prima facie* depend upon the circumstances in which he comes into the transaction. If, for instance, all that is assigned to him is the benefit of a contract, and the assignor, who is a party to the contract, undertakes to continue to discharge the burdens of it, it would be remarkable if it were to be held that the assignee could not take the benefit without assuming the burden. The circumstances show that the assignee was intended to take only the benefit, and that the burden was intended to be borne in the same way as it had been borne previously.

On the other hand, if the assignee takes as a purported assignee of the whole contract from a company which is on the point of going into liquidation, he undertaking to discharge all the burdens and to indemnify the company, then, unless the benefit and burden principle is to be rejected in its entirety, I would have thought that the circumstances

showed that he was not intended to take the benefit without also assuming the burdens, and that the result would accord with the intention, *vis-à-vis* not only the company but also the persons entitled to enforce those burdens. No doubt the terms of any relevant document would be of major importance; but I would regard the matter as one which has to be determined from the surrounding circumstances as a whole. One possible way of looking at it is to regard the subsequent transaction as doing what the initial transaction did not, namely, annex the burden to the benefit so that the one could not be taken free from the other: but there are difficulties in this.

Fifth, a problem that is unsolved (and, it seems, unconsidered) is that of who falls within the benefit and burden principle. In the old forms of the rule there was no difficulty; a person named as a party to a deed, or a person granted an estate by a deed, could be identified without difficulty. But when the rule came to be stated in the form of "a person" or "a man" who takes the benefit of a deed, the answer is not so obvious. Plainly this is wider than merely those named in the original instrument, but equally plainly it cannot sensibly mean anyone in the world. In *Halsall v. Brizell* [1957] Ch. 169 and in *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 the doctrine was applied to successors in title to land which one of the original parties had taken; and plainly such persons should be within the principle. But is it to be confined to those who are shown to be successors in title to land or other property? Should someone who has such a title be bound, while someone else, who may on investigation be found to have no proper title, take free? I do not see why there should be any such distinction. It seems to me that the principle ought to embrace anybody whose connection with the transaction creating the benefit and burden is sufficient to show that he has some claim to the benefit, whether or not he has a valid title to it. Mere strangers seem to me to be another matter: I would exclude them from the meaning of "a man" or "a person" for the purposes of the principle. I shall not attempt to explore the obvious difficulties in determining just where the dividing line lies or ought to lie.

I shall next consider whether the defendant British Phosphate Commissioners are liable under any form of the benefit and burden rule, whether pure or "all or none." First, there is the question of the construction of the 1913 agreement and the A and C deeds. In the former I can see nothing which gives any real support to the view that the benefits to the company under the agreement have been made conditional on accepting its burdens; and in particular that applies to clause 12 (a), relating to replanting. The mere fact that the same instrument creates both the benefit and the burden, or that they both relate to the same subject matter, cannot possibly, in my view, make the one conditional on the other. I can see no words in the instrument, or for that matter anything else, that manifest any intention to bring about this result. The contrast between this document and the documents in cases where there has been held to be a conditional benefit are obvious.

The A and C deeds are in like case. Of course, they have fewer clauses

nous matters such as clause 12 (d) and (e) of the 1913 agreement, which provide for uniform prices for goods and the supply of fresh water at 3d. a gallon. But I am quite unable to see anything which makes the grant of the rights to the company conditional on, or qualified by, the obligation to replant. In the result I hold that neither the 1913 agreement nor the A or C deeds confer benefits which are qualified by or conditional upon the replanting obligations. Accordingly, for the plaintiffs to succeed under this head the case must be brought within the pure principle of benefit and burden.

I propose first to consider whether the two defendant British Phosphate Commissioners fall within that principle. There are two questions. First, do the circumstances in which they became connected with the 1913 agreement and the A and C deeds show that they ought not to be able to take the benefit without accepting the burden; and, second, have they a sufficient title to the benefit? I can consider these together. The first defendant became a commissioner on January 1, 1965, and the third on July 1, 1970; the second, as I have mentioned, died during the proceedings. There seems to be nothing special about the appointment of either. Each was put in a position of control over a large concern that had been carrying on the undertaking for over 55 years. The British Phosphate Commissioners have never been expressly incorporated, and it has not been contended that there has been any implied incorporation of them, whether for the purposes of their undertaking or otherwise. Furthermore, the machinery for vesting the assets of the concern in new commissioners never seems to have been operated. There may well have been what Mr. MacCrindle suggested, an equitable assignment of the assets of the undertaking to be inferred from the surrounding circumstances. Yet although not incorporated, the British Phosphate Commissioners carried on the undertaking in the manner of a corporation and not of a partnership. The death or retirement of one of the commissioners produced none of the complexities of a partnership. All that happened was that when a new commissioner was appointed he stepped into the vacant place, with hardly a ripple to show the change. All the plant, machinery, money and other assets of the concern, together with the rights of mining, built up over the years, sat there ready for the new commissioner to control with his brethren. So did the liabilities, whether for royalties or anything else.

When the first commissioners took over from the company, the contemporary documents and circumstances made it plain that the British Phosphate Commissioners were to take over not only the rights but also the liabilities: I have already read clause 1 (c) of the 1920 indenture. When thereafter a new commissioner was appointed there were no documents to make this plain, but the circumstances seem to me to be to the same effect. The thought that a new commissioner was intended to take over the assets, but not the liabilities, which the outgoing commissioner, stripped of the assets, was to bear for the rest of his life, and his estate after his death, seems to me to be absurd. I shall not pursue the matter in detail, since it seems to me overwhelmingly clear that at every stage of change the whole basis was that of there being no right

question of any British Phosphate Commissioner having intended not to accept the benefits but to commit wholesale trespasses instead. Furthermore, the connection of the defendant commissioners with the instruments creating the benefits and the burdens seems to me to be ample for them to be held liable for the burdens if they took any benefits.

That brings me to the question of taking the benefits; and here there is a diversity between the 1913 agreement and the A and C deeds. In the course of a discussion on Day 9 Mr. Macdonald, while opening his case, found himself in difficulties over the application of *Halsall v. Brizell* [1957] Ch. 169 to the 1913 agreement. These arose because since 1922 no A or C deeds had been executed, and the benefit of the 1913 agreement to the company was that 145 acres should be acquired by the company under those deeds. (As I have mentioned, after 1920 no A deed was executed, but two C deeds were executed in June 1921 and one in January 1922; and that was all.) In the end Mr. Macdonald said that his *Halsall v. Brizell* point fell down in 1921 or 1922 for the 1913 agreement, and so while he still relied on it for the A and C deeds (as well as that footing the case proceeded until after the evidence was complete. However, on Days 87 and 88 Mr. Macdonald sought to revive his *Halsall v. Brizell* point on the 1913 agreement, and to resile from the concession that he had made on Day 9. Not surprisingly, Mr. Browne-Wilkinson objected, on the ground that the defendants had met the case put forward by Mr. Macdonald after he had made his concession and had not dealt with the evidence on the footing that the point conceded would in fact be argued.

In the end, the benefits which Mr. Macdonald wished to rely upon, apart from the execution of the three C deeds, were the actual use of implied rights of access under the 1913 agreement; he disclaimed any reliance upon the mere existence of these rights of access as a benefit. I said that I would listen to Mr. Macdonald's submissions on the point, and not exclude them at that stage, and if necessary rule later; and on Day 93 I heard Mr. Macdonald's final submissions on this point, with a commentary from Mr. Browne-Wilkinson and Mr. Vinelott. Mr. Macdonald took his reliance upon the execution of the C deeds to the point of saying that the execution of a single C deed would expose the defendant commissioners to liability. He also urged a point on the British Phosphate Commissioners being trustees for the Crown.

I am not satisfied that there has ever been a sufficient taking of a benefit under the 1913 agreement to expose the defendant British Phosphate Commissioners to liability under that agreement. I think that Mr. Macdonald's first thoughts about the three C deeds were sound. These deeds concerned land which is not the subject of these proceedings, and I do not see how the execution of those deeds in 1921 and 1922 can really be brought home to the defendant British Phosphate Commissioners as being a real benefit taken by them. As it has developed, I do not think that the pure benefit and burden principle is a technical doctrine, to be satisfied by what is technical and minimal. I regard it as being a broad principle of justice, to be satisfied by what is real and substantial.

agreement, I am far from satisfied that any relevant access enjoyed by the defendant British Phosphate Commissioners was enjoyed under and by virtue of the 1913 agreement. Of course, this point illustrates the difficulty of reaching a proper conclusion on a subject that had not been raised before the evidence was heard, and on a contention which had been abandoned. I very much sympathise with counsel who, in a case of this complexity, seeks to assist the court by abandoning a point which he feels he cannot sustain, and then later finds that second thoughts appear to make the point arguable. However, sympathy for counsel must not override justice to the other side; and if I had to rule on the point I should hold, with a little hesitation, that it was not open to Mr. Macdonald. But my primary holding is that if the point is open to him it fails.

The A and C deeds are another matter. They produce a substantial stock of mining rights which successive British Phosphate Commissioners exploited over the years; and these cannot be brushed aside as being irrelevant or trivial. Nor can there be any question of successive British Phosphate Commissioners being unaware that it was by virtue of these deeds that they enjoyed substantial mining rights. In this connection I should mention the position of the individual plots in the present case. The claim for replanting is made by the first 10 plaintiffs, who between them allege that they own, wholly or in part, 17 plots of land. Four of these plots were the subject of P and T deeds alone, and not A or C deeds. Of these, Mr. Macdonald in the end wholly abandoned the claims in respect of plots 143 and 294, made by the ninth and the second plaintiffs respectively, since these plots were wholly outside the 250 acre area. For the same reason he abandoned part of the claims for plots 263 and 316, made by the eighth and tenth plaintiffs respectively, leaving those claims in being only to the extent of about half and three-quarters of an acre respectively.

The other 13 plots out of the 17 were all the subject of A or C deeds. Their status as regards working was much clarified by a document marked D.A.2, coupled with the evidence of Mr. Chapman. Of the 13 plots, four were worked out before January 1, 1965, when the first defendant became a British Phosphate Commissioner, and they have not been used in his time. These four are plots C.17, C.109, C.162 and C.219. Two more plots (A.248 and A.282) would be in the same category but for the fact that phosphate from adjoining plots rilled over into them and was not removed until 1972. Four plots (C.101, C.179, C.183 and A.292) have been wholly or partly worked in the first defendant's time; two (C.120 and A.233), though partly worked before his time, remained in February 1973 still to be further worked (with C.120 in fact being fully worked in 1975); and one (A.287), though said to have been fully worked in 1913, was retained for further working until 1973, when it was decided that it was no longer required.

Mr. MacCrimble not unnaturally stressed that the obligation to replant under the A and C deeds was a plot-by-plot obligation, so that if no mining or other use of a particular plot had been made in the time of a defendant commissioner, he could not be said to have taken the benefit of the A or C deed for that plot, and so ought not to be subject to the burden of it. That, of course, has considerable logical force, and if each

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Tito v. Waddell (No. 2)

Megarry V.C.

of the plots had remained distinct, I think it would have carried much weight. However, the acquisitions made by the company under the A and C deeds were plainly made with the object of building up large areas that could conveniently be mined as a whole; and it was these large areas that were handed over to the first and successive British Phosphate Commissioners. The acquisitions were in effect pooled, and operations were carried out on a pooled basis.

In those circumstances, I do not think that it is open to the defendant commissioners to point to a particular portion of the pooled area and say that as that portion had never been used by them, they were not subject to the burdens relating to it. What their predecessors treated globally and what they succeeded to globally must, I think, be dealt with on a global basis. The defendant commissioners have plainly taken the benefit of these pooled areas; it is not as if they had segregated the worked-out plots and returned them to their owners as contemplated by the A and C deeds. Furthermore, it is clear that in many cases plots were partly worked, or regarded as being fully worked, and then later, with improved methods of extraction, the British Phosphate Commissioners of the day have returned and extracted more phosphate under the rights conferred by the A or C deed. Where a right to mine has been exercised by predecessors, and successors who acquire that right remain able to exercise it in circumstances which give reality to the principle, I do not consider that it is, or should be, open to a successor commissioner to say of a plot: "That was worked in the time of my predecessors. True, under the A or C deed I now have the right to work it further if I wish; but not unless I actually do so am I to be treated as taking a benefit under the deed. If instead of returning the plot to its owner I do nothing with it for years, thus keeping open any decision whether to work it further, and in the end I decide to work the plot no more, I have taken no benefit under the deed."

I do not find this an easy matter, and I can well see that there may be other views on it. However, after some hesitation I have reached the conclusion that this, when coupled with what I have said about the relationship of individual commissioners to the undertaking as a whole, is enough to establish that the defendant British Phosphate Commissioners took a sufficient benefit under the A and C deeds in issue to make the pure principle of benefit and burden capable of applying to them.

The next question is, "What burden?" This case squarely raises the questions of the application of the pure principle of benefit and burden to unitary burdens, a question which does not seem to have appeared in any previous case. In the case of continuing benefits and burdens, *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379 supports the proposition that if the benefit is given up, the burden ceases; and of course if that applied to unitary burdens, questions might arise in each case whether the benefit was still being taken. But in the case of a unitary burden such as this, I do not think that it can be the case that a person taking the benefit can, when challenged, cease to take it, and then say that he is no longer subject to the burden of restoring the land, or paying compensation for the damage done, or doing whatever else it is that the

33

There is little enough help to be found in the cases. *Aspden v. Seddon* (No. 2), 1 Ex.D. 496 was, as I said, a case of a conditional benefit, and so not within the scope of the pure principle of benefit and burden: it was an "all or none" case. Nevertheless, in the Exchequer Division Glensby B. did, as happened in some of these cases, discuss benefit and burden. In his view, the defendants were liable under the licence to pay compensation for damage to the land on the footing that "During the time that you have enjoyed it this burden—that is, the obligation to make compensation for what you have done—has come into existence": p. 508. The indication is very slender: but it seems to me to point in what I think is the right direction. I bear in mind, too, that the two old technical rules which at least have a place in the pedigree of the principle clearly seem to involve acceptance of the whole burden.

When the full features of the principle have been worked out, it may well be that if, as I think, any person who takes a sufficient benefit, for however short a period, is held liable for the whole burden, including future unitary burdens, it will also be held that there are implied rights of indemnity which will ensure that, whoever is held initially liable, the liability will ultimately be borne by the right persons. Where there is a terminal liability, such as the obligation of replanting in this case, it seems right that the burden should ultimately be borne by the latest in the chain of persons liable at the time when the burden accrues. Certainly this should be so in the case of an undertaking such as that of the British Phosphate Commissioners, where normal commercial methods contemplate some sinking fund or other provision for meeting future liabilities of this kind. On that footing, the two defendant British Phosphate Commissioners, being now in office, are in my judgment properly subject to the whole of the liability.

Next, does the liability exist only in equity, or is there liability at law? In *E. R. Ives Investment Ltd. v. High* [1967] 2 Q.B. 379, 394, it clearly appears that the right of way that arose under the principle of benefit and burden was merely equitable; but, of course, whether rights in land in England are legal or equitable depends to a considerable extent on the peculiarities of English land law. In *Halsall v. Brizell* [1957] Ch. 169 there is no express statement on the point: but what was in issue was an obligation to pay money, and in holding that in taking the benefit the defendants became liable to pay the money I think that Upjohn J. must have been contemplating an obligation at law. I can see no suggestion that there was any equitable obligation under a trust or, indeed, under any other concept of equity. Whether an obligation at law would depend upon an implied contract or upon some form of quasi-contract I shall not pause to inquire: *Goff and Jones, The Law of Restitution* (1966). I may say, considers neither of the cases that I have just mentioned.

In *Aspden v. Seddon* (No. 2), 1 Ex.D. 496, 504, Bramwell B. found it unnecessary to consider whether the correct form of action in the conditional benefit type of case was assumpsit, or an action on the case, or even tort. The pure principle of benefit and burden, if it applies at law, seems to be no less uncertain. It may be founded on acceptance, so that he who accepts the benefit is taken also to have accepted the

burden, or it may be a rule of law, so that he who accepts the benefit is bound by the burden, irrespective of any acceptance of it. In the conditional benefit type of case it may perhaps be easier to rest the doctrine on acceptance than in cases of the pure principle of benefit and burden: if you accept the benefit you cannot escape the consequence that you have accepted what forms part of the benefit, or is annexed to it, whereas under the pure principle the burden may be the price the law compels you to pay for taking the benefit. However, on the facts of this case I do not think that I need attempt to resolve these problems when considering whether liability under the pure principle exists at law or only in equity. As I have mentioned, there is *Halsall v. Brizell*; there is also the common law basis of the two old technical rules; and, more important, there is the nature of the burden, to which I must now turn.

Put shortly, it seems to me that whether the liability under the pure principle is legal or is merely equitable must primarily depend on whether the burden itself is legal or equitable. If the burden is merely equitable, so will be the liability. If the burden is legal, then I do not see why the liability should not also be legal. Whether the process that requires the burden to be assumed is legal or equitable, and whether it is based on acceptance or operates as a rule of law, what has been assumed should retain its quality of being legal if it is legal and equitable if it is equitable. If you take a burden, you must take it as you find it. If it be assumed that the pure principle operates only in equity (an assumption that I would not readily make), I do not see why equity should not say to the person seeking to take the benefit: "Unless you assume the burden at law, you will be restrained by injunction from taking the benefit." That, of course, would apply to the active form of the principle. In the passive form, some or all of the benefit has already been taken, and the question is whether the burden has to be borne. If some of the benefit still remains, an injunction could be granted, as in the active form: but if all of it has been taken, this could not be done. It may be that declaratory relief could be obtained, or possibly the principle of equity treating as done that which ought to have been done might be invoked. At all events, I think it would be most undesirable if the result were to be any different from that in the case of the active form.

My conclusion on the benefit and burden point is thus that the British Phosphate Commissioners are liable at law on the replanting obligations in the A and C deeds, and so are subject to the normal remedies (including damages) for any breach of that obligation. That, of course, is subject to other matters dealt with in this judgment. This liability could also be supported, if necessary, by the liability to pay damages in substitution for specific performance under the Chancery Amendment Act 1858 (Lord Cairns' Act) if this is a case in which specific performance could be decreed.

I can deal quite shortly with one last matter, namely, whether the plaintiffs are entitled to enforce the obligations. This arises because they are not, of course, original contracting parties. Subject to one point, I can see no difficulty. There is no reason why the benefit of the replanting obligations should not run with the land both at law and in equity. The obligations could hardly more clearly touch and concern

A the land, and the benefit of them must have been intended to run with the land and be enforceable by the owner for the time being. The present owners of the land are therefore the persons entitled to enforce the obligations.

B The one point that I mentioned by way of reservation is that of jurisdiction. Mr. Vinelott submitted that where a plaintiff could establish his right to sue only by showing that he owned his plot of land, that brought the case within the doctrine of *British South Africa Co. v. Companhia de Moçambique* [1893] A.C. 602, and so the court had no jurisdiction because the action concerned foreign land. I have already considered this doctrine to some extent in Ocean Island No. 2, and also in relation to the sand. Of course, in Ocean Island No. 2 the issue was somewhat different. Nevertheless, much the same point arises, namely, whether the ownership of the land is something that merely arises "incidentally" or "as a collateral incident," and so is outside the *Mozambique* doctrine, or whether that doctrine applies to it on the ground that the ownership of the land is an essential ingredient of the plaintiff's case, or the whole basis of it, and that this suffices.

C It will be remembered that in the passage that I quoted from *St. Pierre v. South American Stores (Guth and Davies) Ltd.* [1936] 1 K.B. 382, 397, Scott L.J. said that he understood the words of Lord Herschell L.C., at p. 626, in the *Mozambique* case to have meant that "it is the action founded on a disputed claim of title to foreign lands over which an English court has no jurisdiction." In the present case I cannot see what "disputed claim of title" the plaintiffs' action is "founded on." What the claim is founded on is the obligation to replant that the plaintiffs contend is binding on the commissioners; and the main battleground has been on whether the burden of the obligation binds the commissioners. There has been no contention that the benefit of that obligation has not passed to the present landowners, whoever they are: indeed, it was Mr. Vinelott who cited *Reid v. Bickerstaff* [1909] 2 Ch. 305, 319, 320, as part of his submission that it was because the benefits had passed in this way that the *Mozambique* doctrine barred the plaintiffs' path.

D As in Ocean Island No. 2, I would hold that where, as here, there are no rival claimants to the land, a plaintiff who adduces evidence of his title to foreign land as a means of establishing that he is entitled to enforce some obligation or assert some right is not thereby brought within the *Mozambique* rule. Such a question seems to me to arise "incidentally" or "as a collateral incident," even though it may form a necessary link in the plaintiffs' path to success. A rung on a ladder may be essential for progress to the top, but it is not itself the top. The claim of want of jurisdiction fails.

E With that, I have reached the end of the question of benefit and burden. In a sentence, I hold the defendant British Phosphate Commissioners liable at law on the replanting obligations in the A and C deeds by virtue of the pure principle of benefit and burden. I know that I shall not be alone in regretting the length of my judgment on these points: but difficult questions are involved, and the subject was argued over many more days than had been devoted to it in other cases. I am conscious that there is much that remains unresolved and open for

A decision in the future; but that is inevitable in a developing branch of the law. My task, too, is to decide the case before me rather than to attempt a comprehensive rationalisation of this or any other branch of the law. In so far as I have considered matters, whether of principle or otherwise, that do not directly arise for decision, I have done so in an attempt to understand how the principles do or should operate.

B (7) *Failure to prescribe trees.* I shall now consider the question of prescription by the resident commissioner. The obligation to replant under the A and C deeds is to replant the land as nearly as possible to the extent to which it was planted when the company's operations commenced "with such indigenous trees and shrubs or either of them as shall be prescribed by the resident commissioner for the time being in Ocean Island." It is common ground that there never has been any such prescribing. Furthermore, there has been no resident commissioner in Ocean Island since the last war, when Tarawa became the seat of government. Nor has there been any resident commissioner at all since January 1, 1972, when under the Gilbert and Ellice Islands (Amendment) Order 1971 the office of resident commissioner was replaced by that of governor.

D The obligation to replant contained in the A and C deeds is, of course, to do so when the land should "cease to be used by the company for the exercise of the rights hereby granted"; and Mr. Macdonald contended that a letter dated March 2, 1971, from the Secretary of State for Foreign and Commonwealth Affairs to the chairman of the Council of Leaders showed that the Secretary of State then knew that much of the land in question could be returned to the Banabans. The extent of this land is shown by a British Phosphate Commissioners' memorandum dated April 16, 1969, which stated that 50 per cent. of the land in the eastern mining area and 50 per cent. of the land in the central mining area could be surrendered at that stage. (The memorandum, incidentally, illustrates the practice of the British Phosphate Commissioners in dealing with the land on a block basis rather than on a plot-by-plot basis.) This knowledge of the land no longer needed by the commissioners meant, said Mr. Macdonald, that the duty of the resident commissioner to prescribe the trees and shrubs arose at some time during the period 1969-1971.

F Mr. MacGrindle, who also relied on other defences, said that if all else failed the defendant British Phosphate Commissioners contended that the claim was premature because there had been no prescribing by the resident commissioner. At that, Mr. Macdonald said he would claim damages for anticipatory breach: but he had difficulties in this on the pleadings, and ultimately he dropped the contention. The point cropped up in various forms at various stages of the proceedings. One point was whether in replacing the resident commissioner by the governor the Order in Council of 1971 had in effect simply substituted "governor" for "resident commissioner" in the replanting obligation. The answer to that appeared to be No. What article 5 (3) of the Order did was to provide that

H "In the existing laws any reference to the High Commissioner or to the resident commissioner shall in their application to the colony be construed as a reference to the governor";



City of Mississauga

MEMORANDUM

To CHAIRMAN AND MEMBERS OF From L. W. STEWART, Q.C.
Dept. PUBLIC WORKS COMMITTEE Dept. CITY SOLICITOR

20 October 1983

REGISTRY No.
DATE OCT 25 1983
FILE No.
CLERK'S DEPARTMENT

SUBJECT: Private Lane Residential Development

COMMENTS:

The writer attended a meeting on October 18, 1983 at the Provincial Government offices of The Ministry of Consumer and Commercial Relations, arranged by Mr. Milt Farrow of The Ministry of Municipal Affairs and Housing.

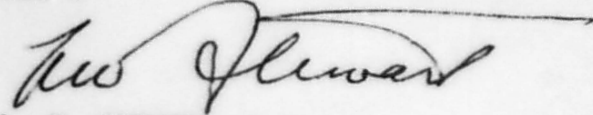
Present were Steven Iczkovitz, solicitor for the developer, Richard Priddle, Q.C., Director of Titles and Land Registration, Dana Hall, solicitor with The Ministry of Municipal Affairs and Housing, and Zita Bury, solicitor with Mr. Priddle, and the writer.

The whole discussion centred around "the registrability of positive covenants" or as we have been advising for some months now, positive covenants cannot run with the land, they are not binding, or to put it another way they are unenforceable.

Mr. Priddle and the government lawyers agreed with our opinion of the law. In fact Mr. Priddle stated that one of the prime reasons for passing The Condominium Act in 1966 was because positive covenants cannot be enforced. Mr. Priddle was definite in that such covenants could not be registered. He also said that, representing his Ministry he was concerned with Consumer Protection.

Subsequent to that meeting, late on October 19, 1983 I indirectly received a copy of a letter from David Strachan, Vice President of First City Development Corporation Limited, sent to Councilor Culham stating that they are withdrawing their proposal. It is regrettable that he did not have the courtesy to inform staff of the Engineering and the Legal Departments of his decision. Perhaps if more attention had been paid to staff's opinions much time and money could have been saved.

RECOMMENDATION: That an entirely new draft plan be required to be submitted rather than "a revision to their current draft plan 21T-83036".



L. W. STEWART, Q.C.
CITY SOLICITOR.

LWS:jk

c.c. E. Halliday

0422L/4L

FirstCity DEVELOPMENT CORP. LTD.

DELIVERED

October 19, 1983

City of Mississauga
1 City Centre Drive
Mississauga, Ontario
L5B 1M2

RECEIVED	
PROPERTY NO.	12622
DATE	OCT 19 1983
FILE NO.	C-0407
CLERK'S DEPARTMENT	

Attention: Councillor D.J. Culham, Chairman
Public Works Committee

Re: Lisgar - Modular Lotting Concept

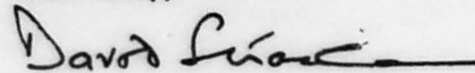
Dear Sir:

As a result of yesterday's meeting between our lawyer, the City solicitor and Provincial lawyers it is with the utmost regret that we have to inform you that we are withdrawing our proposal. We therefore request that our appointment for tomorrow with your Committee be cancelled.

We are now proceeding with the preparation of a new draft plan of conventional design which will be formally submitted as a revision to our current draft plan 21T-83036.

We would like to express our sincere appreciation and thanks to you and to your Committee for the encouragement and assistance you have given us with this proposal.

Yours truly,



David Strachan
Vice President, Land

DS/sp

cc: Milt Farrow
Councillor T. Southorn
Steve Iczkovitz
Team Three
Paul Theil Associates
Miller Bobaljik

CITY OF MISSISSAUGA

MINUTES

MEETING #9

NAME OF COMMITTEE: PUBLIC WORKS

DATE OF MEETING: Thursday, October 20, 1983

PLACE OF MEETING: Committee Room 'A' at 9:30 a.m.

MEMBERS PRESENT: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield, left meeting at 11:30 a.m.
Mayor H. McCallion

OTHERS PRESENT: Councillor T. Southorn

STAFF PRESENT: Mr. A. McDonald, Director, Maintenance Engineering
Mr. R. W. Barker, Subdivision Control Engineer
Mr. L. W. Stewart, Q.C., Solicitor
Mrs. C. Dodds, Committee Co-ordinator

MATTERS CONSIDERED:

1. Report from the City Solicitor, dated October 20, 1983, which was circulated at the meeting, on the legal implications of private lane residential development. Mr. Stewart advised that on October 18th he had attended a meeting in the offices of the Ministry of Consumer and Commercial Relations at Queen's Park, arranged by Mr. Milt Farrow, at which the solicitors for the Lisgar District development, the Director of Titles and Land Registration, and solicitors for the Ministry of Municipal Affairs and Housing had also been present. The outcome of this meeting had been agreement by the government lawyers and the Director of Titles and Land Registration, that positive covenants cannot run with land, are not binding, and therefore are unenforceable. As a result of the meeting, a letter dated October 19th, had been circulated by the Lisgar District developer, First City Development Corp. Ltd., that their proposal was being withdrawn.

Also considered at the meeting were the following:

- (i) Publication prepared by the Ministry of Municipal Affairs and Housing entitled "Private Roads - Planning Guidelines for Municipalities, dated March, 1982.
- (ii) Report from the City Solicitor, dated September 15, 1983, on the legal implications of a private road residential development, deferred to this meeting of the Committee.

October 20, 1983

- (iii) Report on the Public Works Committee's Field Trip to London on September 19, 1983. Mr. John Rogers asked that it be noted that he and Councillor Southorn had also attended the Field Trip.
- (iv) Communications from Borden & Elliot, Solicitors representing First City Development Corp. Ltd., dated September 30th, on the legal issues concerning cluster housing project.
- (v) Copy of information received from the City of London, Ontario, on the private streets in their municipality.
- (vi) Cost comparison between a conventional lotting scheme and a modular lotting scheme, using the three pipe system with a 2-year storm criterion for both designs, prepared by Paul Theil & Associates Ltd., consulting engineers to the First City Development Corporation's proposed modular development.
- (vii) Comparison of maintenance costs for conventional lotting scheme vs. modular lotting scheme, prepared by Paul Theil & Associates Ltd.
- (viii) Cost of Resurfacing module private road in 1983 dollars, prepared by Paul Theil & Associates Ltd.

Present at the meeting was Mr. Milt Farrow, Assistant Deputy Minister, Community Planning Wing of the Ministry of Municipal Affairs and Housing, who advised that he had arranged the meeting of all the lawyers concerned because there appeared to be legal difficulties involved with the development proposal. Mr. Farrow advised that his Ministry was anxious to find new ideas in housing in the Province. While he was disappointed that the private lane development proposal had been abandoned, it had to be recognized that the government lawyers were responsible to prospective purchasers, and the scheme, as proposed under current legislation, offered no consumer protection or methods of recourse if conflicts arose between owners within the development. One possible solution that had not been investigated thoroughly, which might or might not address the ownership problems, was the concept of vacant land condominium ownership. This had been tried in Florida and Alberta, however, Mr. Farrow felt that the Ministry of Consumer and Commercial Relations might be reluctant to make changes to The Condominium Act.

Discussion then took place on English Case Law and the Canadian Courts, the current marketability of condominium developments, and the workability of similar projects, particularly the one visited in London, Ontario. It was pointed out by Mr. Farrow, that the approval of his Ministry was not required for the Lisgar District development. However, in 1982 his Ministry had prepared a publication directed to municipalities in Northern Ontario entitled "Private Roads - Planning Guidelines for municipalities" and as a result of consideration being given to this publication, his department had become involved at the request of Mr. Somer Rumm and more recently by invitation extended by the City of Mississauga to attend this meeting.

October 20, 1983

During the discussions with Mr. Farrow it was pointed out that the project proposed for Mississauga was different from the London concept because the roads in the London development were dedicated public roads which had not been assumed by the municipality. Were problems to arise, the local municipality could accept dedication and assume responsibility for their maintenance. Mr. Farrow also mentioned that he understood Mr. Priddle, Director of Titles and Land Registration, was prepared to test one group of six units through the courts to have the legal aspect resolved.

The following attended the meeting on behalf of First City Development Corporation; Mr. Somer Rumm, Mr. Harry Petschar, Mr. Bill Salter, Mr. D. Strachan, and Mr. Morty Gross and Mr. Steve Iczkowitz, both of the firm of Borden Elliot.

Mr. Somer Rumm thanked the Committee and City staff for its efforts and stated he was encouraged that efforts to resolve the problems with the development were being continued. He asked that the letter from First City Development Corp. Ltd., dated October 19, 1983, addressed to Councillor D. J. Culham, Chairman of the Committee, advising of their desire to withdraw their application, be withdrawn.

During the presentation by the representatives of First City Development Corporation, the following alternative proposals for the processing of the development were discussed:

- a) Obtain a decision of the Court by way of a stated case.
- b) Process development under Plan of Subdivision with sufficient funds deposited with the City to cover the rebuilding of the private roadways.
- c) Process on the basis of rent charges. This would grant an interest in land for which rent could be charged. Although there are no precedents in Canada, the Master of Titles was reportedly open to this proposal.
- d) Seek legislation that would permit vacant land ownership, under The Condominium Act.
- e) Obtain new legislation to allow positive covenants to run with lands, although the developer indicated some reluctance, since greater problems might result.
- f) Process under subdivision agreement with servicing standards lowered to a level that, while acceptable to the City were it to assume the roads and services at a later date, would still allow the development to proceed under the private road concept.
- g) Process development on a small block under The Condominium Act recommended in the report from the City Solicitor, dated September 15 deferred to this meeting.

It was moved by Councillor Marland:

- (i) That the report from the City Solicitor dated October 20, 1983, on private lane residential development, circulated at the Public Works Committee Meeting held on that date, be received.

October 20, 1983

- (ii) That the private lane residential development concept be referred back to the Commissioner of Engineering and Works and to the City Solicitor, to meet with the developer of the Lisgar District and his consultants, to endeavour to resolve the difficulties of ownership and servicing in light of the alternative suggestions discussed at the Public Works Committee Meeting held on October 20, 1983, and the result of these discussions be reported back to the Public Works Committee.

Mr. John Rogers asked that the motion be amended to include a request for reports from both the Commissioner of Planning and the City Manager. Councillor Marland agreed to the amendment to her motion, which was then voted on and carried. Councillor Marland asked it to be recorded in the Minutes that no one had voted against her motion. Mr. Schofield had left the meeting at the time the vote was taken.

C.04.07

A.00.02.01

See Recommendation #42 (Councillor Marland)

2. Report dated October 5, 1983, from the Commissioner of Engineering and Works, re-submitting his previous reports on the naming of a street relative to the extension of Matheson Boulevard easterly to Renforth Drive, and in addition setting forth the general procedure followed for naming streets within the City of Mississauga.

On May 4, 1983, General Committee considered a report relating to the naming of the extension of Matheson Boulevard to Renforth Drive, and recommended the following:

- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the realigned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983 from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.
- (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
- (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

October 20, 1983

As a result of this recommendation, the Commissioner of Engineering and Works reported to General Committee on July 19, 1983, and recommended the name SATELLITE proposed by York Hannover Development Ltd. for the portion of the roadway contained within their development, and the remaining portions of the extension (Parts A & C on the sketches) be named SATELLITE. This report was considered by General Committee on August 15th and on August 17th, Council adopted the following recommendation:

That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration.

General Committee's concerns had been that the road to be named "Satellite" is an extension of Matheson Boulevard East east of Dixie Road and this might cause confusion for the public and particularly for emergency services. The Commissioner recommended that the Public Works Committee suggest a name for the extension of Matheson Boulevard.

Although it was noted that approximately 100 businesses would be affected if the leg of Matheson Boulevard East running south and parallel to Dixie Road were renamed, it was agreed that less confusion would be created if this section of road were renamed and Matheson Boulevard East was applied to the road on its east/west course between Dixie Road and the City of Etobicoke. It was therefore recommended by Councillor Marland

- (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and the proposed extension of this roadway to the boundary with the Borough of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";
- (b) That the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be renamed.
- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to an evening meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.

October 20, 1983

- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

T-76042

F.02.07

C.04.12

See Recommendation #43 (Councillor Marland)

3. Summary of Unfinished Business relating to the Public Works Committee as of October 20, 1983.

A.03.04.06

See Recommendation #44 (Councillor Marland)

RECEIVED

ADJOURNMENT: 12:00 noon

Christine Dodds

CHRISTINE DODDS, COMMITTEE CO-ORDINATOR
0016C/68C

PUBLIC WORKS COMMITTEE
0061768C

October 20, 1983
FILE: A.03.04.06

REPORT NO. 9-83

TO: The General Committee of the City of Mississauga.

LADIES AND GENTLEMEN:

The Public Works Committee presents its ninth report and recommends:

- 42-83 (a) That the report from the City Solicitor dated October 20, 1983, on private lane residential development, circulated at the Public Works Committee Meeting held on that date, be received.
- (b) That the private lane residential development concept be referred back to the Commissioner of Engineering and Works and to the City Solicitor, to meet with the developer of the Lisgar District and his consultants, to endeavour to resolve the difficulties of ownership and servicing in light of the alternative suggestions discussed at the Public Works Committee Meeting held on October 20, 1983, and the result of these discussions be reported back to the Public Works Committee.
- (c) That the Commissioner of Planning be requested to comment to the Public Works Committee on private lane residential development from a planning standpoint.
- (d) That the City Manager be requested to comment to the Public Works Committee on private lane residential development.

C.04.07
A.00.02.01
(38-42-83)

- 43-83 (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and the proposed extension of this roadway to the boundary with the Borough of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";
- (b) That the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be renamed.

October 20, 1983

- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to an evening meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.
- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

T-76042
F.02.07
C.04.12
(38-43-83)

- 44-83 That the Summary of Unfinished Business relating to the Public Works Committee as of October 20, 1983, be received for information.

A.03.04.06
(38-44-83)



City of Mississauga

MEMORANDUM

To Chairman and Members From Mrs. Christine Dodds
Dept. Public Works Committee Dept. Clerk's Department

December 12, 1983.

Re: Change in the date of the Public Works Committee Meeting
File: A.03.04.06

With the consent of the Chairman, the Public Works Committee meeting scheduled for December 15th has been changed to:

TUESDAY, DECEMBER 20, 1983 at 9:30 a.m.
in the COUNCIL CHAMBERS

The change to the date and place of the meeting was made to accommodate the public meeting with the industry on Matheson Boulevard East, which will be the first item on the agenda for the meeting.

Christine Dodds

Christine Dodds
Committee Coordinator.

c.c. Mayor and Members of Council
All Department Heads

THE CORPORATION OF THE CITY OF MISSISSAUGA

A G E N D A

PUBLIC WORKS COMMITTEE

TUESDAY, DECEMBER 20, 1983 AT 9:30 A.M.

COUNCIL CHAMBERS

MEMBERS: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor M. Marland
Councillor R. Skjarum
Mr. J. C. Saddington
Mr. D. A. Strutt
Mr. W. Schofield

PREPARED BY: Clerk's Department
DATE: December 16, 1983

COMMITTEE MEMBERS ARE REQUESTED TO CONTACT THE APPROPRIATE DEPARTMENT HEADS
PRIOR TO THE MEETING IF GREATER EXPLANATION OR DETAIL IS REQUIRED WITH REGARD
TO ANY ITEM ON THE AGENDA.

15C/68C

INDEX, PUBLIC WORKS COMMITTEE AGENDA, DECEMBER 20, 1983

<u>ITEM #</u>	<u>FILE #</u>	<u>SUBJECT</u>
1.	T-76042 F.02.07 C.04.12	Naming of street relative to extension of Matheson Boulevard easterly to Renforth Drive
2.	F.05.01	Disposal of Snow and Leaves - Traders Associates
3.	J.05.83035	Storm Sewer Outfalls and Sanitary Sewer Overflows Port Credit - Consulting Engineering Services
4.	A.03.04.06	Summary of Unfinished Business

CITY OF MISSISSAUGA

PUBLIC WORKS COMMITTEE

TUESDAY, DECEMBER 20, 1983
COUNCIL CHAMBERS AT 9:30 A.M.

A G E N D A

MATTERS FOR CONSIDERATION:

1. On October 20, 1983, the Public Works Committee considered reports from the Commissioner of Engineering and Works on the problem that was evolving with the naming of a new street which, in fact, was an easterly extension of Matheson Boulevard East. In this connection the Committee received a Report dated October 5, 1983, from the Commissioner of Engineering and Works, re-submitting his previous reports on the naming of a street relative to the extension of Matheson Boulevard easterly to Renforth Drive, and in addition setting forth the general procedure followed for naming streets within the City of Mississauga.

Previously, on May 4, 1983, General Committee had considered a report relating to the naming of the extension of Matheson Boulevard to Renforth Drive, and at that time the following had been recommended:

- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the realigned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983 from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.
- (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
- (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

As a result of this recommendation, the Commissioner of Engineering and Works reported to General Committee on July 19, 1983, and recommended the name SATELLITE proposed by York Hannover Development Ltd. for the portion of the roadway contained within their development, and the remaining portions of the extension (Parts A & C on a different sketch attached to the July 19th report) be named SATELLITE. This report was considered by General Committee on August 15th and as a result of concerns expressed at the meeting, General Committee's recommendation to Council, which was adopted on August 17th, was as follows:

December 20, 1983

ITEM 1 Continued

That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration.

General Committee's concerns had been that the road to be named "Satellite" is an extension of Matheson Boulevard East east of Dixie Road and this might cause confusion for the public and particularly for emergency services. The Commissioner recommended that the Public Works Committee suggest a name for the easterly extension of Matheson Boulevard.

The matter was therefore considered on October 20, 1983, and although it was noted that approximately 100 businesses would be affected if the leg of Matheson Boulevard East running south and parallel to Dixie Road were renamed, it was agreed that less confusion would be created if this section of road were renamed and Matheson Boulevard East was applied to the road on its east/west course between Dixie Road and the City of Etobicoke. It was therefore the Public Works Committee's recommendation back to General Committee:

- (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and the proposed extension of this roadway to the boundary with the Borough of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";
- (b) That the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be renamed.
- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to an evening meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.
- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

On November 14, 1983, Council adopted the above recommendation and a letter was mailed to all the owners and tenants who abutt Matheson Boulevard East, east of Dixie Road, inviting their comments at this meeting of the Public Works Committee. As of the time of preparing this agenda, the following written comments have been received:

December 20, 1983

Item 1 Continued

- Letter from Today's Business Products Limited, dated December 14, 1983, expressing their opposition to the re-naming of the north south leg of Matheson Boulevard East.

It is expected that representatives from the industrial community will attend the meeting.

T-76042
F.02.07
C.04.12
DIRECTION REQUIRED

2. Report dated November 9, 1983, from the Commissioner of Engineering and Works, recommending that the City of Mississauga thank Traders Associates for the use of their sites for the disposal of snow and leaves.

F.05.01
RECOMMEND ADOPTION

3. Joint report dated November 18, 1983, from the Commissioners of Engineering and Works and Public Works for the Region of Peel and the City of Mississauga, regarding the retention of the services of qualified Consulting Engineers to review the existing storm sewer outfalls and sanitary sewer overflows in the Port Credit Area, and recommend changes.

In their report they recommend:

- a) That the City of Mississauga endorse the retention of the Consulting Engineering Company of Gore & Storrie Limited by the Region of Peel to carry out further studies in the Port Credit Area of Mississauga at a cost of \$19,000.00, and recommend Capital Works to be undertaken (Project No. 90433-83-2370).
- b) Regional Funds in the amount of \$9,500.00 be provided from Account No. 413-L2507 (Interest Recovery on CWIP), with the remaining funds in the amount of \$9,500.00 being provided by a Purchase Order from the City of Mississauga.

J.05.83035
RECOMMEND ADOPTION

4. Summary of Unfinished Business relating to the Public Works Committee as of December 20, 1983.

A.03.04.06
RECOMMEND RECEIPT



City of Mississauga

MEMORANDUM

Files: 11 141 00039
16 111 76137
11 211 00025

To	Chairman and Members of the	From	Mr. William P. Taylor, Commissioner
Dept.	Public Works Committee	Dept.	Engineering and Works
REGISTRY No. 12350		DATE OCT 7 1983	
FILE No. T-76042 F0207 C04-12		P. W. DATE OCT 20 1983	
CITY OF MISSISSAUGA		October 5, 1983	
		P. W. DATE DEC 20 1983	

SUBJECT: Naming of a street relative to the extension of Matheson Boulevard easterly to Renforth Drive together with the procedure for naming streets within the City of Mississauga in general.

ORIGIN: Engineering and Works Department.

COMMENTS: Council, at its meeting on August 17, 1983, considered our report of July 19, 1983, concerning the naming of Matheson Boulevard extension easterly to Renforth Drive and passed the following recommendation:

"1077-83 That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration."

In this connection I am therefore resubmitting our report of July 19, 1983, for the consideration of the Committee. We are also enclosing our March 31, 1983, report. These recommendations were adopted by Council on May 9, 1983.

For the information of Committee the following is an extract from the Minutes of the August 15, 1983, General Committee meeting pertaining to this item:

"16. Mayor McCallion expressed concern about this recommendation since that portion to be named Satellite is in fact an extension of Matheson Boulevard east of Dixie Road and may cause confusion not only for the public but emergency services. Mayor McCallion recommended that this matter be referred to the Public Works Committee for further consideration. This motion was voted on and carried."

This concern was addressed in our March 31st report.

Also, at the Council meeting of August 17, 1983, we were requested to report to Public Works Committee on the procedure for naming streets in general within the City of Mississauga. The procedure for the naming of streets varies dependent upon the origin of the

1A

Chairman and Members of the
Public Works Committee
October 5, 1983
Page 2

SUBJECT: - Naming of street ---

COMMENTS - cont'd. street requiring naming, however, can generally be broken down into three categories:

1. New streets created by a Plan of Subdivision.
2. Extensions of existing streets.
3. Other requests.

We will attempt to address each of these categories individually.

1. New streets created by a Plan of Subdivision -

This category of street naming constitutes by far the largest number of requests. Typically, the names are chosen by the Developer or his Consultant and are often consistent with the theme of the development. These names are submitted to the Commissioner of Engineering and Works for approval. All names approved by the Commissioner are then referred to the Region of Peel Planning Department who in turn circulate the proposed names to a variety of Agencies including all Emergency Services for their comment on the acceptability of the proposed name. Upon a favourable response the names are then placed on the City of Mississauga Reserve Street Name List and the Region of Peel Reserve Street Name Index for the exclusive use of the applicant and this reservation is valid for a three-year period after which, if the applicant has not used same, they are removed from the Reserve Lists. The names are reviewed as to acceptability on a Region wide basis. Approved street names are required as a condition outlined in the Consolidated Report for draft plan approval and the street names come into effect upon the registration of the Plan of Subdivision.

2. Extensions of existing streets -

This is rather a simple matter whereby means of a Plan of Subdivision or Land Division streets are extended and they would be named the same name as that of the existing street. Street names such as this come into force (other than subdivisions) with the passing of the appropriate by-law by Council.

3. Other requests -

Other requests for street naming would be an existing confliction with a street name or where the residents request for one reason or another that the street name be changed. These matters are reviewed by this office and are referred to the Ward Councillor for comments and quite often a Public Meeting is held or a petition is requested from all of the Owners on the street. Again, these names are processed through the City and the Region of Peel in the usual manner and come into force when the appropriate by-law is passed by Council.

18

Chairman and Members of the
Public Works Committee
October 5, 1983
Page 3

SUBJECT: - Naming of street ---

- RECOMMENDATIONS:
1. That the report of the Commissioner of Engineering and Works dated October 5, 1983, with respect to the street naming procedure in the City of Mississauga be received.
 2. The the Public Works Committee recommend a name for the extension of Matheson Boulevard easterly to Renforth Drive after considering our reports of March 31, 1983, and July 19, 1983.

AEM
AEM:dw
Encls.

William P. Taylor
William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.

c.c. Mr. E. M. Halliday

City of Mississauga

MEMORANDUM

To Mayor and Members of General Committee

From Mr. William P. Taylor, Commissioner

Dept.

Dept. Engineering and Works

July 19, 1983

SUBJECT:

Naming of a street relating to the extension of Matheson Boulevard to Renforth Drive.

ORIGIN:

Engineering and Works Department.

COMMENTS:

General Committee at its meeting of May 4, 1983 considered a report relating to the above noted matter and recommended the following.

- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the re-aligned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.
- (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
- (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

With respect to the selection of a name for the proposed extension please note the following.

The name SATELLITE has been proposed by York Hanover Development Ltd. for the portion of this roadway contained within their development (T-76042R). This name meets with the approval of both this office and the Region of Peel with regard to conflicts and/or duplications. The proposed name has been reviewed with the Ward Council F. McKechnie who has no objections to its use.

7d

Mayors and Members of General Committee

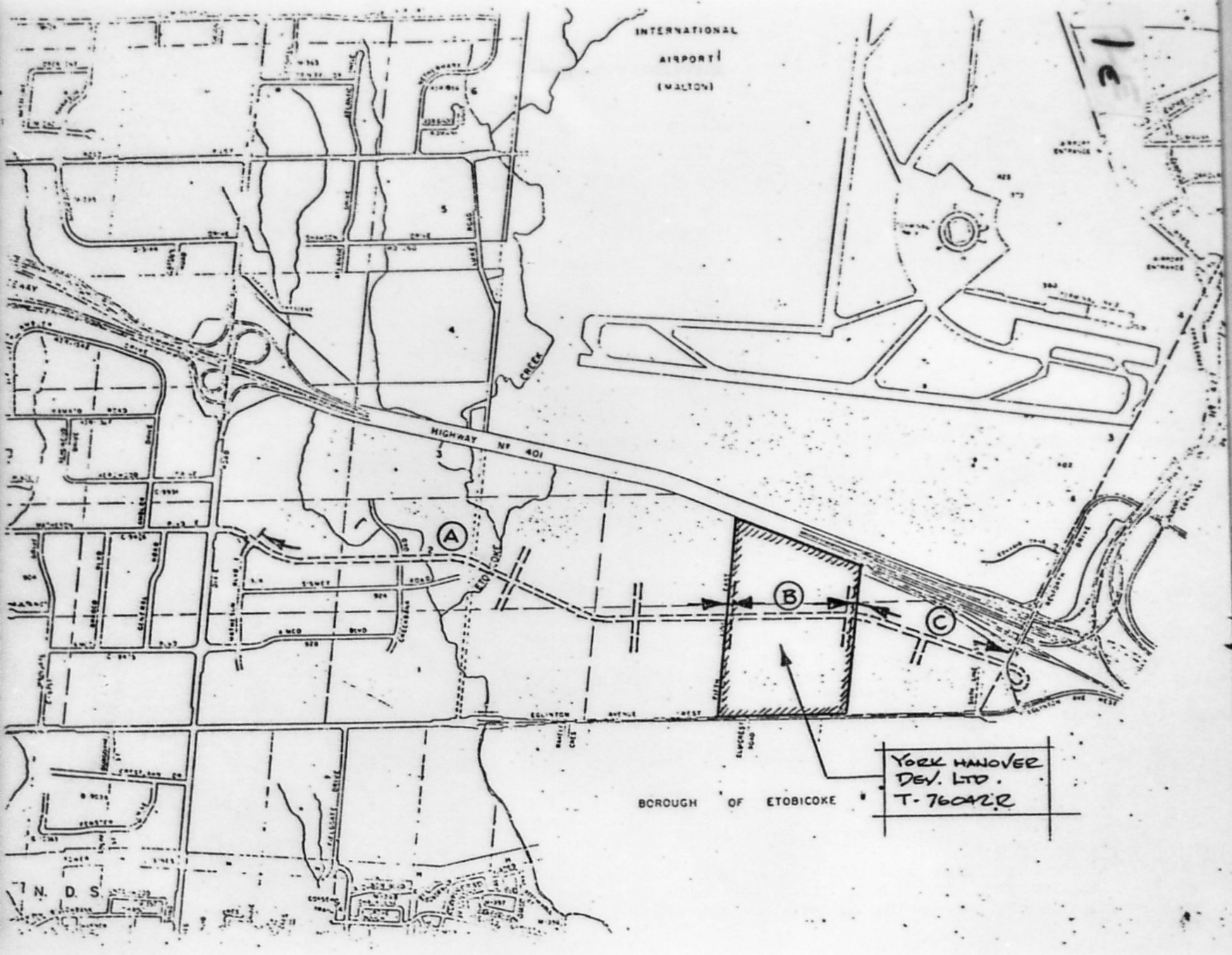
RECOMMENDATIONS:

- (a) That the name SATELLITE be approved for the portion of the above noted extension contained within the York Hanover Development Ltd. site - T-76042R (Part B on attached sketch).
- (b) That as the remaining portions of the above noted extension are established as public highway they be named SATELLITE (Parts A & C on attached sketch).

PJD/st
Attach.

C.C. Mr. E.M. Halliday
Councillor F. McKechnie

William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.



INTERNATIONAL
AIRPORT
(MALTON)

HIGHWAY NO. 401

BOROUGH OF ETOBICOKE

YORK MANOVER
DEV. LTD.
T-760422

(A)

(B)

(C)

1c



City of Mississauga

MEMORANDUM

Files: 11 121 00035
11 121 00036
12 111 00014
11 141 00039

16

To: Chairman and Members of the
Public Works Committee
Dept.

From: Mr. William P. Taylor, Commissioner
Engineering and Works
Dept.

RECEIVED
REGISTRY NO. 4031
DATE APR 12 1983
FILE NO. C-04-12
F0207
CLERK'S DEPARTMENT

P. M. DATE April 28, 1983

March 31, 1983

MAY 04 1983

G. C. DATE

SUBJECT: Naming of a street relating to the extension of Matheson Boulevard to Renforth Drive.

ORIGIN: Engineering and Works Department.

COMMENTS: Matheson Boulevard, as it currently exists, runs from Hurontario Street easterly to Dixie Road, thence easterly and southerly to a point approximately 1,000 ft. north of Eglinton Avenue. This roadway will ultimately connect to Eglinton Avenue when the draft industrial plan of subdivision located east of Dixie Road between Aimco Boulevard and Eglinton Avenue is registered and serviced. It is proposed as part of the Airport South Secondary Plan to extend the east/west portion of Matheson Boulevard easterly to Renforth Drive and connect to Renforth Drive via a grade separated interchange. This extension would be built as a condition of subdivision development between the creek and Renforth Drive and the section from the creek westerly including the bridge over Etobicoke Creek would be constructed by the City as part of our Capital Works Programme.

We have looked at the name to be given to this east/west arterial and have come to the conclusion that there are only two alternatives; namely,

1. Name the proposed extension as Matheson Boulevard in its entirety from Dixie Road to Renforth Drive and re-name the existing Matheson Boulevard allowance southerly from the proposed extension to Eglinton Avenue. This proposal would affect approximately 100 existing industrial premises.
2. Name the portion of the proposed extension from its intersection with the existing north/south portion of Matheson Boulevard to Renforth Drive a completely new name and retain the existing name of Matheson Boulevard between Dixie Road and Eglinton Avenue. This proposal would affect no existing addresses.

There is no doubt from a technical standpoint Alternative One is superior, however, it is felt that the impact on Owners and Tenants would be very significant and would outweigh the advantages. It is also our opinion that the use of appropriate directional signing can minimize the negative aspects of Alternative Two.

...2

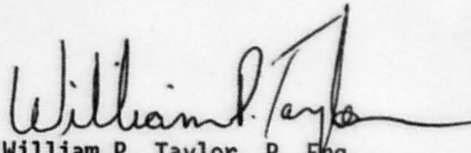
1G
Chairman and Members of the
Public Works Committee
March 31, 1983
Page 2

Subject: Naming of a street relating to the
extension of Matheson Boulevard to
Renforth Drive.

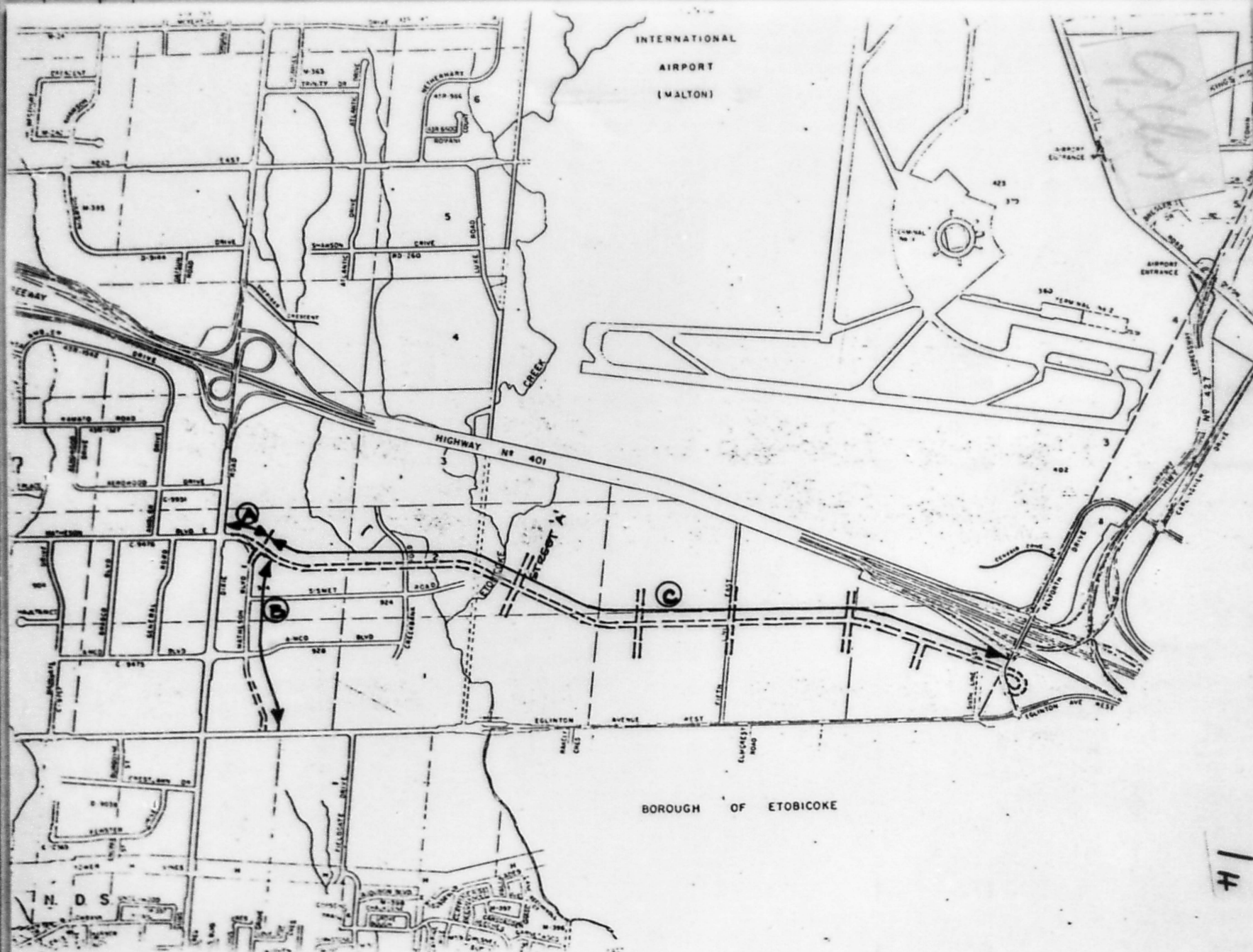
COMMENTS - cont'd. By copy of this report to the Ward Councillor we are requesting that he attend the Public Works Committee meeting at which this item is to be discussed in order that he can express his views at that time.

- RECOMMENDATIONS:
1. That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the re-aligned north/south portion of Matheson Boulevard (shown 'A' on attached sketch) and the re-aligned north/south portion of Matheson Boulevard (shown 'B' on attached sketch) remain as Matheson Boulevard.
 2. That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (shown 'C' on attached sketch) be named with a different name.
 3. That the name selected be referred to the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

AEM:dw
Attach.


William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works.

c.c. Mr. E. M. Halliday
Councillor F. McKechnie
Mr. R. W. Barker



1 i

Terence L. Julian, A.M.C.T., C.M.C.
City Clerk



Leonard M. McGillivray
Deputy City Clerk

OFFICE OF THE CLERK

December 8, 1983.

P. W. DATE Dec 20 1983

TO: ALL OWNERS AND TENANTS OF LANDS FRONTING OR ABUTTING
MATHESON BLVD. EAST, EAST OF DIXIE ROAD

As you are well aware, Matheson Boulevard East, east of Dixie Road, currently runs in an easterly and then southerly direction to a point approximately 1,000 feet north of Eglinton Avenue. When the industrial plan of subdivision located east of Dixie Road between Aimco Boulevard and Eglinton Avenue is registered and serviced, this roadway will ultimately connect to Eglinton Avenue.

In addition, as a part of the Airport South Secondary Plan, it is proposed that Matheson Boulevard will be extended in an east/west direction, from the intersection of Matheson Boulevard East and Dixie Road, to connect to Renforth Drive via a grade separation. A report from the Commissioner of Engineering and Works, dated March 31, 1983, regarding the changes to Matheson Boulevard, with the sketch attached, is enclosed for your information.

As you will note from the report, a problem arises with street naming. As a result of deliberations by the Public Works Committee to date, on November 14, 1983, the Council of the City of Mississauga adopted the following recommendation:

- (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and the proposed extension of this roadway to the boundary with the City of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";
- (b) That the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be renamed.

THE CORPORATION OF THE CITY OF MISSISSAUGA
1 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO. L5B 1M2
TELEPHONE (416) 279-7800

FORM 459

15

- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to a meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.
- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

The next meeting of the Public Works Committee will be held on Tuesday, December 20, 1983, at 9:30 a.m. in the Council Chambers on the Main Floor of City Hall, 1 City Centre Drive. The renaming of the north/south portion of Matheson Boulevard East will be considered at that time and you are cordially invited to attend to present your views to the Committee. Although "SATELLITE" is a name that has been suggested, other names can be considered at the meeting on December 20th.

If you are unable to attend this meeting and would like to submit your thoughts in writing to the Committee, it would be appreciated if these could be in this office by Thursday, December 15, 1983. If you have any questions please do not hesitate to contact Mr. W. P. Taylor, P. Eng., Commissioner of Engineering and Works, 279-7600, Ext. 340, or me at 279-7600, Ext. 594.

Yours very truly,

Christine Dodds

Christine Dodds (Mrs.)
Committee Co-Ordinator.

Encl.

c.c. Councillor Frank McKechnie

1493C/106C

1K



1785 Matheson Blvd.
Mississauga, Ontario
L4W 1V2
Telephone: (416) 625-3335

RECEIVED	
REGISTRY NO.	14348
DATE	DEC 15 1983
FILE NO.	C.04.12 F.02.07
CLERK'S DEPARTMENT	

December 14, 1983

Public Works Committee
The Corporation of the City of Mississauga
1 City Centre Drive
Mississauga, Ontario
L5B 1M2

P. W. DATE Dec 20 1983

Gentlemen:

RE: RENAMING OF THE NORTH/SOUTH PORTION OF
MATHESON BOULEVARD EAST

As a tenant at 1785 Matheson Blvd. operating 47,000 square feet of office and warehouse space we wish to serve notice of our objection to the proposed renaming of a portion of Matheson Blvd. East.

There are two areas of concern. First, the costs we would incur in re-doing all of our printed matter including, but not limited to catalogues, letterhead, computer forms, business cards etc. We estimate art work changes alone to cost between 2 and 3 thousand dollars.

Second, but more important, is the effect an address change would have on our identity in the marketplace. On July 12, 1983, Today's Business Products Ltd. purchased the Ontario Commercial Division of Willson Office Specialty Limited. The Retail Division of Willson was sold to other interests who were able to retain the name Willson. Through a planned publicity campaign with our clients we will have gradually changed our name from Willson to Today's Business Products Ltd. by February 15, 1984. This has created some confusion to our customers and concern as to the on-going stability of their supplier. We feel that we have been able to arrest these concerns. Any other changes at this time, or in the near future, would have further adverse affect on our customer base.

This problem would be further compounded by Willson Stationers maintaining their address at 1515 Matheson Blvd. while we would be required to change ours.

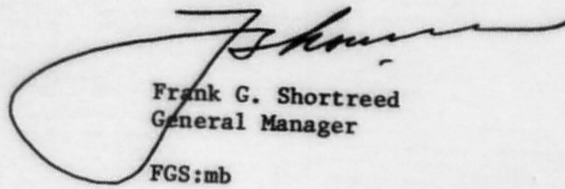
TODAY'S BUSINESS PRODUCTS LTD. 393 Nugget Avenue Scarborough, Ontario M1S 4G3 Telephone: 292-5155

1L

2

We respectfully request the committee to reconsider its recommendation to rename this portion of Matheson Blvd. in light of the related negative impact on our and other affected businesses.

Respectfully submitted,
TODAY'S BUSINESS PRODUCTS LTD.



Frank G. Shortreed
General Manager
FGS:mb



City of Mississauga

MEMORANDUM

Files: 12 111 00015
12 271 83002
11 141 00039

To: The Chairman and Members of the
Public Works Committee

RECEIVED

From: Mr. William P. Taylor, Commissioner

REGISTRY No. 13442

Dept. Engineering and Works

DATE NOV 14 1983

FILE No. F-0501

CLERK'S DEPARTMENT November 9, 1983

SUBJECT: Disposal of Snow and Leaves P. W. DATE Dec 20 1983
ORIGIN: Engineering and Works Department

COMMENTS: Discussions have been held with Traders Associates concerning sites which are presently owned by them which we could use for the disposal of snow and leaves.

In this connection I am enclosing a letter from Traders Associates outlining the locations. With respect to the crop compensation to be paid this was only to apply if we were utilizing the sites prior to the farmer harvesting his crop. This is no longer applicable.

RECOMMENDATION: That the report dated November 9, 1983, from the Commissioner of Engineering and Works, regarding the disposal of snow and leaves, be received, and that Traders Associates be thanked for their co-operation in providing these sites until such time as they require them for development purposes.

AEM:dw
AEM:dw
Encl.

William P. Taylor
William P. Taylor, P. Eng.,
Commissioner,
Engineering and Works

c.c. Mr. E. M. Halliday

TRADERS ASSOCIATES
55 CITY CENTRE DRIVE, SUITE 702,
MISSISSAUGA, ONTARIO L5B 1M3
TEL: (416) 270-7202

OCT 13 1983

2A

October 12, 1983

ENGINEERING WORKS DEPT.		
RECEIVED FILE		
OCT 14 1983		
Route To	Initials	
H.E.M.		

City of Mississauga,
Engineering & Works Department,
1 City Centre Drive,
Mississauga, Ontario,
L5B 1M2.

Attention: Mr. D. Debenham

Dear Mr. Debenham: Re: Disposal of Snow & Leaves

In reply to your letter of September 22, 1983,
I would like to confirm our field meeting of September 29,
1983 as follows:

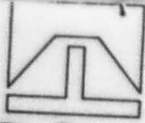
a) Snow Stockpiling

- a 10-acre area of the former gravel pit,
south of Matheson Boulevard to be used.
The specific location and preparation work
to be finalized between ourselves at your
convenience.

b) Leaf Disposal

- a 5-acre site to be made available on
lands north of the 401 and east of
Kennedy Road.
- specific location has been determined in
the field, being north of Britannia Road
east of Kennedy Road.
- crop compensation to be paid by the City
of Mississauga to the tenant farmer upon
receipt of Invoice at the rate of \$175.00
per acre.

.... /2.



2B

- 2 -

October 12, 1983

- the operation to be neat and tidy.
- tax assessment to remain as agricultural.

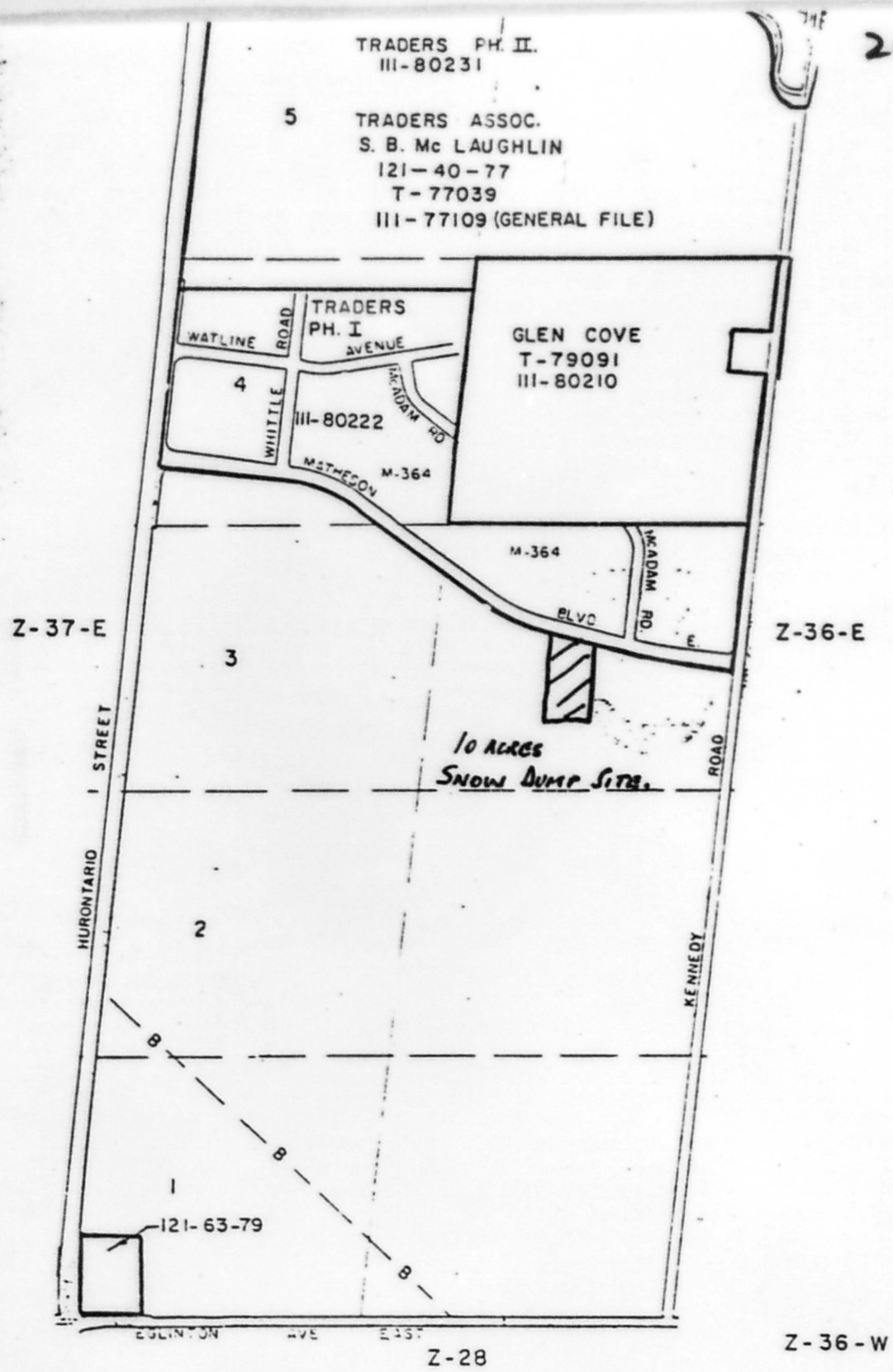
I trust that you will find the above arrangements to your satisfaction.

Yours very truly,

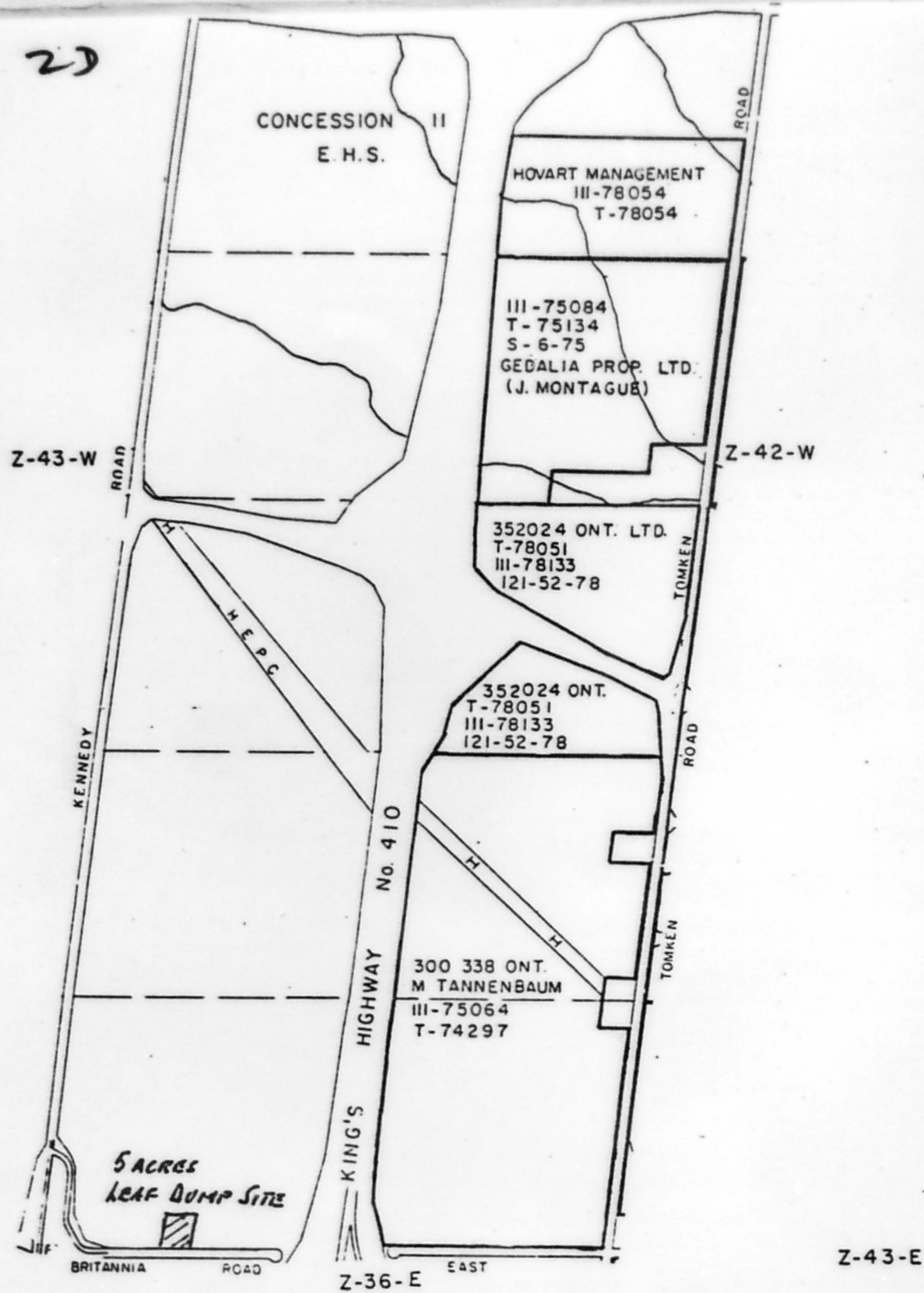
Steve Lawson

S.D. Lawson, P. Eng.,
Vice President.

SDL:bd



23





City File No. 12 111 00031
Region " " 83-2370

3

November 18, 1983

Chairman and Members
Public Works Committee
City of Mississauga

P. W. DATE Dec 20, 1983

AND

Chairman and Members
Public Works Committee
Regional Municipality of Peel

Re: Consulting Engineering Services
Storm Sewer Outfalls
and Sanitary Sewer Overflows.
Port Credit

Council Resolution CW-124-83 authorized the retention of qualified Consulting Engineers to review the existing storm sewer outfalls and sanitary sewer overflows and recommend changes.

Terms of Reference were prepared and the following Consulting Engineering Companies were requested to submit proposals.

Proctor & Redfern Limited
Gore & Storrie Limited
Shoreline Engineering Limited
F. J. Reinders & Associates

Proposals were received on September 21, 1983 and each Company was interviewed on November 7, 1983. Based on the proposal submitted and the subsequent interview it is proposed to award the work to Gore & Storrie Limited.

Gore & Storrie have recommended that further studies be undertaken on the storm sewer systems. These studies are in addition to those undertaken by the Region on the sanitary system. These additional studies would be carried out by the City and Regional staff under the direction of Gore & Storrie, who would then review the data obtained from both the new study and the work previously done by the Region. Based on this review Gore & Storrie will make recommendations on the detailed works to be undertaken.

The estimated cost of this work is \$19,000.00 and it is proposed to provide the necessary funds from Account No. 413-L2507 (Interest Recovery on CWIP) with 50% of this amount being provided by the City of Mississauga.

/2

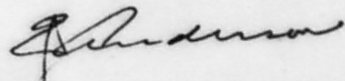
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Chairman and Members Public Works Committee,
City of Mississauga
AND
Chairman and Members Public Works Committee
Regional Municipality of Peel
November 18, 1983

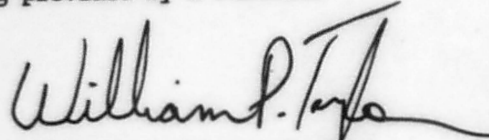
Page 2

IT IS RECOMMENDED THAT:

1. The Consulting Engineering Company of Gore & Storrie Limited be retained by the Region of Peel to carry out further studies in the Port Credit Area of Mississauga at a cost of \$19,000.00, and recommend Capital Works to be undertaken (Project No. 90433.83-2370).
2. Regional Funds in the amount of \$9,500.00 be provided from Account No. 413-L2507 (Interest Recovery on CWIP), with the remaining funds in the amount of \$9,500.00) being provided by a Purchase Order from the City of Mississauga.



W. J. Anderson, P. Eng.
Commissioner of Public Works
Regional Municipality of Peel



William P. Taylor, P. Eng.
Commissioner of Engineering
and Works
City of Mississauga

C.C. Mr. E. M. Halliday
Mr. L. E. Button
Mr. P. J. Marshall

PUBLIC WORKS COMMITTEE
DATE: OCTOBER 20, 1983

SUMMARY OF UNFINISHED BUSINESS

128C/17C

Page 1

REQUEST NO.	REPORT REQUESTED FROM	SUBJECT	SOURCE	DUE DATE	NO. OF REVISIONS
163-82	Eng. & Works	Second Assessment of "rippled" pavement used as a speed deterrent on roadway at Mineola Rd. E. and Indian Road	Public Works - May 20/82 Public Works - July 6/83	June, 1984	
135-83	Eng. & Works	Feasibility of installing flashing amber lights at bus stops on North and South Service Roads	Transit Comm. - July 8/83	Jan. 19, 1984	1
177-83	Eng. & Works	Policy re: reconstruction of streets under a local improvement program	Council, Sept. 12/83	Jan. 19, 1984	1
201-83	Eng. & Works	Policy - employment of local trucks within the City of Mississauga for the purpose of snow removal	Council, Oct. 11/83	Dec. 3, 1983	
204-83	Eng. & Works	On-Street Parking in Residential Zones Programme Development	Public Works, Sept. 19, 1983	Jan. 3, 1984	
205-83	Planning Dept.	Review of parking standards in Residential & Commercial Zones	Public Works, Sept. 19, 1983		
206-83	Eng. & Works	Summer Garbage Collection	Public Works, Sept. 19, 1983		

4

P. W. DATE Dec 20/83

F 02.07
C 04.12

- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to a meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.
- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

The next meeting of the Public Works Committee will be held on Tuesday, December 20, 1983, at 9:30 a.m. in the Council Chambers on the Main Floor of City Hall, 1 City Centre Drive. The renaming of the north/south portion of Matheson Boulevard East will be considered at that time and you are cordially invited to attend to present your views to the Committee. Although "SATELLITE" is a name that has been suggested, other names can be considered at the meeting on December 20th.

If you are unable to attend this meeting and would like to submit your thoughts in writing to the Committee, it would be appreciated if these could be in this office by Thursday, December 15, 1983. If you have any questions please do not hesitate to contact Mr. W. P. Taylor, P. Eng., Commissioner of Engineering and Works, 279-7600, Ext. 340, or me at 279-7600, Ext. 594.

Yours very truly,

Christine Dodds

Christine Dodds (Mrs.)
Committee Co-Ordinator.

Encl.

c.c. Councillor Frank McKelvie
1493C/106C

December 14, 1983

I just want to take this time to enquire as to who is going to absorb the cost for the companies on the portion to be renamed?

It's not as easy as snapping your fingers to have the street you have been situated on for several year all of a sudden change its name. I know that I have same stationary which will last for the next couple of years and I definitely would not appreciate having to change.

Also, I have yet to understand the purpose of giving "east" or "west" to a street address. The main question is east or west of what? I know I have had trouble finding an address on Dundas because of this east or west. And with a street as large as Dundas or Eglinton just think of how many easts and wests you can have. If you say to me Eglinton West I immediately think of West of Yonge Street but I know it could also mean out in Mississauga. Why not just start numbering at one end and proceed naturally upward?

GRAPHIC LINE-A-TONE
COMPANY LIMITED
1515 MATHESON BLVD. UNIT 9B
MISSISSAUGA, ONTARIO L4W 2P5

DEC 19 1983

Al Medina

CITY OF MISSISSAUGA

MINUTES

MEETING #10

NAME OF COMMITTEE: PUBLIC WORKS

DATE OF MEETING: Tuesday, December 20, 1983

PLACE OF MEETING: Committee Room 'A' at 10:00 a.m.

MEMBERS PRESENT: Councillor D. Culham, Chairman
Mr. J. Rogers, Vice-Chairman
Councillor D. Cook
Councillor R. Skjarum
Mr. J. C. Saddington

MEMBERS ABSENT: Councillor M. Marland
Mr. D. A. Strutt
Mr. W. Schofield

STAFF PRESENT: Mr. W. P. Taylor, Commissioner of Engineering and Works
Mr. A. McDonald, Director, Maintenance Engineering
Mr. J. Thomas, Traffic & Transportation Engineer
Mr. I. Scott, Commissioner of Recreation and Parks
Mrs. C. Dodds, Committee Co-ordinator

MATTERS CONSIDERED:

1. On October 20, 1983, the Public Works Committee considered reports from the Commissioner of Engineering and Works on a problem that was evolving with the naming of a new street which, in fact, would be an easterly extension of Matheson Boulevard East. In this connection the Committee received a report dated October 5, 1983, from the Commissioner of Engineering and Works, re-submitting his previous reports on the naming of a street relative to the extension of Matheson Boulevard easterly to Renforth Drive, and in addition setting forth the general procedure followed for naming streets within the City of Mississauga.

Previously, on May 4, 1983, General Committee had considered a report relating to the naming of the extension of Matheson Boulevard to Renforth Drive, and at that time the following was recommended:

- (a) That the portion of Matheson Boulevard lying between Dixie Road and the proposed intersection with the realigned north/south portion of Matheson Boulevard (Shown "A" on sketch attached to the report dated March 31, 1983 from the Commissioner of Engineering and Works) and the re-aligned north/south portion of Matheson Boulevard (Shown "B" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) remain as Matheson Boulevard.

December 20, 1983

Item 1 Continued

- (b) That the proposed extension lying between its intersection with the re-aligned north/south portion of Matheson Boulevard and Renforth Drive (Shown "C" on sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works) be a different name.
- (c) That the name selected be referred to the Ward Representative, Councillor F. McKechnie, the Commissioner of Engineering and Works and the Region of Peel for approval in the usual manner to ensure that no conflicts or duplications exist.

As a result of this recommendation, the Commissioner of Engineering and Works reported to General Committee on July 19, 1983, and recommended the name SATELLITE proposed by York Hannover Development Ltd. for the portion of the roadway contained within their development, and further recommended that the remaining portions of the extension (Parts A & C on a different sketch attached to the July 19th report) be named SATELLITE. This report was considered by General Committee on August 15th and, as a result of concerns expressed at the meeting, General Committee's recommendation to Council, which was adopted on August 17th, reads as follows:

That the naming of that portion of the proposed extension of Matheson Boulevard lying between its intersection with the realigned north/south portion of Matheson Boulevard and Renforth Drive be referred to the Public Works Committee for consideration.

General Committee's concerns had been that the road to be named "Satellite" will be an extension of Matheson Boulevard East, east of Dixie Road and this might cause confusion for the public and particularly for emergency service vehicles. The Commissioner then recommended that the Public Works Committee suggest a name for the easterly extension of Matheson Boulevard.

The matter was therefore again considered on October 20, 1983, and although it was noted that approximately 100 businesses would be affected if the leg of Matheson Boulevard East running south and parallel to Dixie Road were renamed, it was agreed that less confusion would be created if this section of road were renamed and Matheson Boulevard East were applied to the road on its east/west course between Dixie Road and the City of Etobicoke. It was therefore the Public Works Committee's recommendation back to General Committee:

- (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and the proposed extension of this roadway to the boundary with the Borough of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";

December 20, 1983

Item 1 Continued

- (b) That the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be renamed.
- (c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to an evening meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.
- (d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

On November 14, 1983, Council adopted the above recommendation and a letter was mailed to all the owners and tenants who abut Matheson Boulevard East, east of Dixie Road, inviting their comments. The following written comments were received and presented to the Committee at the meeting:

- Letter from Today's Business Products Limited, dated December 14, 1983, expressing their opposition to the re-naming of the north/south leg of Matheson Boulevard East.
- Note from Graphic Line-A-Tone Company Limited, dated December 14, 1983, in opposition to the re-naming.

The following industrial concerns were represented at the meeting:

Economy Ceilings, Unit 13, 1616 Matheson Blvd.E., (R. LeDrew),
Gateway Reproductions Ltd. Unit 5, 1590 Matheson Blvd.E.(Ross McConnell),
Indusfood Inc. Unit 22, 1590 Matheson Blvd.E.(Ken Gibson),
Elion Enterprises Inc. Unit 8, 1590 Matheson Blvd.E.(Trunes Kodaira)
Striedl Offset Services Unit 12, 1616 Matheson Blvd.E.(D. Singh),
Fellow Litho Ltd. Unit 10, 1590 Matheson Blvd.E.(Fred Fellows),
Today's Business Products Ltd. 1785 Matheson Blvd.E.(Margaret Miller and F. G. Shortreed)

Before the meeting convened, informal discussions took place between the representatives of industry, the Commissioner of Engineering and Works and the Committee Members.

Item 1 Continued

As a result of these discussions, a consensus was reached that the east/west road north of Eglinton, west of Renforth Drive to Etobicoke Creek be named Matheson Boulevard East, however, based on prevailing economics, since the connection between Creekbank Road and Street 'A' shown on the plan identified as 1(h) attached to the Agenda, likely would not be made for over 5 years, and the connection between Creekbank and Dixie Road is likely 10 years away, the name of the north/south leg of Matheson Boulevard East remain as is for the present time, and that all the owners and tenants abutting this north/south road be advised of the tentative time schedules for the east/west extension of the Matheson Boulevard roadway to the City of Etobicoke and that when the new east/west roadway has been completed, the north/south leg of Matheson Boulevard East will be renamed. John Rogers moved that this agreement form the Committee's recommendation to General Committee. Carried.

Chairman Culham asked the representatives of industry who attended the meeting to kindly submit their comments in writing for the record.

T-76042

F.02.07

C.04.12

See Recommendation #45 (J. Rogers)

2. Report dated November 9, 1983, from the Commissioner of Engineering and Works, recommending that the City of Mississauga thank Traders Associates for the use of their sites for the disposal of snow and leaves.

F.05.01

See Recommendation #46 (R. Skjarum)

ADOPTED

3. Joint report dated November 18, 1983, from the Commissioners of Engineering and Works and Public Works for the Region of Peel and the City of Mississauga, regarding the retention of the services of qualified Consulting Engineers to review the existing storm sewer outfalls and sanitary sewer overflows in the Port Credit Area, and recommend changes.

In their report they recommend:

- a) That the City of Mississauga endorse the retention of the Consulting Engineering Company of Gore & Storrie Limited by the Region of Peel to carry out further studies in the Port Credit Area of Mississauga at a cost of \$19,000.00, and recommend Capital Works to be undertaken (Project No. 90433-83-2370).

December 20, 1983

Item 3 Continued

- b) That Regional Funds in the amount of \$9,500.00 be provided from Account No. 413-L2507 (Interest Recovery on CWIP), with the remaining funds in the amount of \$9,500.00) being provided by a Purchase Order from the City of Mississauga with the funds derived from the Storm Sewer Account.

J.05.83035

See Recommendation #47 (R. Skjarum)

ADOPTED

4. Summary of Unfinished Business relating to the Public Works Committee as of December 20, 1983.

A.03.04.06

See Recommendation #48 (J. C. Saddington)

RECEIVED

5. Joint report dated December 19, 1983, from the Commissioner of Engineering and Works and the Commissioner of Recreation and Parks, in response to a petition dated November 1, 1983, from residents of the Oakridge Area, and a memorandum dated October 21, 1983, from Councillor D. Culham, concerning safety hazards in the Oakridge Community. Concerns were expressed about the absence of reasonable and safe access to and from the community except by private motor vehicles and the effects this has on the lifestyle of the children and the adult residents, not only for recreational activities, but also for daily needs and services, such as banking, shopping, etc.

In their report, the two Commissioners dealt with concerns in point form. With respect to speeding on Mississauga Road (Item 1) and speeding on North Sheridan Way (Item 4), staff suggest that this can best be curbed by intensive radar surveillance. Site problems at Stonehouse Crescent and Shawanaga Trail at North Sheridan Way appear to have been solved by shrub and tree trimming. Investigation of the amount of vehicular traffic on Stonehouse Crescent showed that this was not excessive compared to other similar areas, however, there was a need for parents, the school principal and teachers to stress to children that they should walk on the sidewalk on the west side of Stonehouse rather than on the east side of the street. Staff does not support the installation of all-way stops on the North Sheridan Way since warrants are not met. An "after" surveys conducted on Premium Way in a similar situation subsequent to the installation of two all-way stops revealed no reduction in vehicle speeds. Finally other investigations showed that school signage seemed adequate.

The joint report also addressed a request from residents that a paved, well lit foot/bike path be created to link Oakridge Park and Fowler Drive, south of the Robin Drive development, and "Watch for Children" signs. Attached to the report were two figures, figure one depicting existing and future sidewalks, and figure two depicting a pathway opposite the entrance to Oakridge Park on Springbank Road running northerly between the Baseball and Softball grounds, and then between Lots 49 and 50 in the Magic Meadows Plan of Subdivision to Sevenoaks Drive, then via Sevenoaks Drive, Bussage Place to Fowler Drive.

December 20, 1983

Item 5 Continued

The joint report recommended:

- (a) That the joint report from the Commissioners of Recreation and Parks, and Engineering and Works, dealing with residents concerns in the Oakridge Community, dated December 19, 1983, be received.
- (b) That all-way stop signs not be installed at any location on the North Sheridan Way between Mississauga Road and Springbank Road.
- (c) That the Peel Regional Police be requested to continually enforce speed limits on North Sheridan Way and Mississauga Road in the Oakridge Community.
- (d) That the construction of an illuminated gravel pathway from the proposed walkway between lots 49 and 50 in the Magic Meadows Plan of Subdivision to Springbank Road, at an estimated cost of \$37,000.00 be included in the 1984 Recreation and Parks Department Capital Budget for consideration and if approved, that the works be undertaken upon completion of Seven Oaks Drive sidewalk by the developer.

Concern was expressed about the installation of a paved pathway over a former sanitary landfill site, and it was agreed that the surface of the path and lighting should be installed to allow for settlement. John Rogers moved that the recommendation include that "Watch for Children" signs be erected where the pathway meets/crosses Springbank Road and Robin Drive. Councillor Cook further amended the recommendation by adding that the construction and completion of the installation of a sidewalk on the south side of Sevenoaks Drive and the pathway between Lots 49 and 50 by 1984 be included as a condition of the Engineering Agreement in the Magic Meadows Plan of Subdivision.

Councillor Culham suggested that other items concerning traffic safety be addressed at the January meeting of the Public Works Committee.

It was moved by Councillor Skjarum that the recommendation as amended be adopted. Carried.

F.06.03.01

See Recommendation #49 (R. Skjarum)

ADOPTED

December 20, 1983

6. The Commissioner of Engineering and Works reported verbally that he had prepared sidewalk snow removal maps for the 1983/1984 winter.

The Committee recommended that the snow removal on sidewalks be the same as 1983, plus the automatic additions due to new sidewalk construction in 1983, and plus any minor changes to be determined.

It was agreed that the maps should be posted for the benefit of and input from all Members of Council.

F.05.03.02

See Recommendation #50 (J. Rogers)

7. Various recent publications on garbage recycling were circulated to the members and staff was directed to submit a report on the recycling program in Mississauga, which report should include the tonnage of paper being recycled.

F.05.04.05

ADJOURNMENT: 11:00 a.m.

Christine Dodds

CHRISTINE DODDS, COMMITTEE CO-ORDINATOR
0016C/68C

REPORT NO. 10-83

TO: The General Committee of the City of Mississauga.

LADIES AND GENTLEMEN:

The Public Works Committee presents its tenth report and recommends:

- 45-83 (a) That the portion of Matheson Boulevard East lying and running in an easterly direction from Dixie Road, currently named Matheson Boulevard East, (Shown as "A" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), remain named "Matheson Boulevard East", and, when constructed, the proposed extension of this roadway to the boundary with the City of Etobicoke and Renforth Drive (Shown as "C" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be named "Matheson Boulevard East";
- (b) That the owners and tenants who abut the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be advised of the time scheduling for the construction of the new east/west roadway to the boundary of the City of Etobicoke and Renforth Drive, estimated for completion in approximately five to ten years, and that when this roadway becomes a reality, their north/south leg of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), will be renamed.

T-76042
F.02.07
C.04.12
(38-45-83)

- 46-83 That the report dated November 9, 1983, from the Commissioner of Engineering and Works, regarding the disposal of snow and leaves, be received, and that Traders Associates be thanked for their co-operation in providing these sites until such time as they require the lands for development purpose.

F.05.01
(38-46-83)

December 20, 1983

- 47-83 (a) That the City of Mississauga endorse the retention of the Consulting Engineering Company of Gore & Storrie Limited by the Region of Peel to carry out further studies in the Port Credit Area of Mississauga at a cost of \$19,000.00, and recommend Capital Works to be undertaken (Project No. 90433-83-2370).
- b) That in addition to the Regional Funds in the amount of \$9,500.00 to be provided from the Region's Account No. 413-L2507 (Interest Recovery on CWIP), the remaining funds in the amount of \$9,500.00 be provided by a Purchase Order from the City of Mississauga with the funds derived from the Professional Services Account and that budget provision be made in 1984.

J.05.83035
(38-47-83)

- 48-83 That the Summary of Unfinished Business relating to the Public Works Committee as of December 20, 1983, be received for information.

A.03.04.06
(38-48-83)

- 49-83 (a) That the joint report from the Commissioners of Recreation and Parks, and Engineering and Works, dealing with residents' concerns in the Oakridge Community, dated December 19, 1983, be received.
- (b) That all-way stop signs not be installed at any location on North Sheridan Way between Mississauga Road and Springbank Road.
- (c) That the Peel Regional Police be requested to continually enforce speed limits on North Sheridan Way and Mississauga Road in the Oakridge Community.
- (d) That the construction of an illuminated gravel pathway from the proposed walkway between lots 49 and 50 in the Magic Meadows Plan of Subdivision to Springbank Road, at an estimated cost of \$37,000.00 be included in the 1984 Recreation and Parks Department Capital Budget for consideration and, if approved, that the works be undertaken upon completion of the Seven Oaks Drive sidewalk by the developer.
- (e) That the Engineering Agreements to be entered into between the City and the Developer of the Magic Meadows plan of subdivision, include the provision that the developer must construct and complete the installation of a sidewalk on the south side of Sevenoaks Drive and the pathway between Lots 49 and 50 connecting to this sidewalk in 1984.
- (f) That "Watch for Children" signs be erected where the pathway meets/crosses Springbank Road and Robin Drive.
- (g) That other concerns of the Oakridge Community dealing with traffic safety be deferred until the next meeting of the Public Works Committee.

F.06.03.01
(38-49-83)

December 20, 1983

50-83 That the maps presented to the Public Works Committee at its meeting held on December 20, 1983, showing sidewalks to be snow ploughed during the winter months, including the additions to the 1983 programme necessitated by sidewalk construction in 1983, be posted in a suitable location in City Hall to enable Members of Council to point out areas of concern within their respective wards.

F.05.03.02
(38-50-83)



City of Mississauga

MEMORANDUM

FILE REF : 11 141 00039
13 211 00017

To Chairman of Public Works Committee From William P. Taylor, Commissioner, Engineering
Dept. City of Mississauga Dept. I.W. Scott, Commissioner, Recreation & Parks

Public Works - Dec 20/83

December 19, 1983

REQUEST NO. 217-83
CLERKS FILE NO. F.06.03.01.

LADIES & GENTLEMEN :

SUBJECT : Safety Hazards in Oakridge Community.

SOURCE : Petition dated November 1, 1983, from area residents.
Memo dated October 21, 1983, from Councillor D. Culham.

COMMENTS : The Engineering Department has investigated the concerns expressed by the residents in the Oakridge Community that have been identified in their petition, and the concerns expressed by Councillor Culham on behalf of Mrs. Law, 2038 Portway Avenue.

With respect to the items in Councillor Culham's memo of October 21, 1983, the Engineering Department responds as follows :

Item 1 - In response to the comment of speeding on Mississauga Road, the Engineering Department conducted radar surveys with the following results :

Mississauga Road (between Springbank Road and Portway Avenue 50 km/h limit)

Nov. 30/83 - a.m. peak (7.30 - 8.30 a.m.) 85%-ile 63.6 k - Average Speed 57.0 k
Nov. 24/83 - p.m. peak (4.30 - 5.30 p.m.) 85%-ile 66.1 k - Average Speed 59.7 k

North Sheridan Way (west of Springbank Road 60 km/h limit)

Oct. 7/83 (2.00 - 3.00 p.m.) 85%-ile - 82.9 k - Average Speed 72.2 k

The speeds on both of these roads indicate an unsatisfactory result. The Peel Regional Police have previously been requested to enforce the speed limits on North Sheridan Way, and as a result of the recorded speeds on Mississauga Road, they shall also be requested to provide enforcement there.

continued ...

SUBJECT : Safety Hazards in Oakridge Community.

COMMENTS :
continued ...

Item 2 - Following a site meeting between Councillor Culham and Engineering staff, some trimming of shrubs and trees has taken place and a subsequent review has indicated there are no sight problems at Stonehouse Crescent or Shawanaga Trail at North Sheridan Way.

Concern was also expressed regarding children crossing at the intersection of Mississauga Road and Shawanaga Trail. There is a School Crossing Guard operating at the painted school crossing located on the west side of the intersection and standard school crossing signs and advanced school crossing signs indicating this crossing, are in place.

The Crossing Guard Supervisor has not received or been made aware of any difficulties occurring at this crossing or at the crossing located at High River Court.

Item 3 - The comment is made that there is "excessive" vehicular movement on Stonehouse Crescent due to parents driving their children to school. This situation is not uncommon at school locations in the City, and at virtually every school there are parents who drive their children. A study was conducted and the results indicate in the a.m. period between 7.45 - 9.00 a.m. there were three buses bringing children to Oakridge P.S., and twenty vehicles dropping off children at the school. No problems were observed or encountered and twenty vehicles is not considered to be an excessive number of vehicles. There is a sidewalk on the west side of Stonehouse Crescent for children to walk on. During the study period, four children were noticed walking on the east side of the road where no sidewalk exists, and it is felt that it should be the parents responsibility to direct their children to walk on the sidewalk provided.

continued ...

SUBJECT :

Safety Hazards in Oakridge Community.

COMMENTS :
continued ...

- School busing exists for children living in excess of one mile from the school therefore we can conclude that parents driving their children to school are residents of the Oakridge Community.

Item 4 - The Engineering Department does not support the installation of all-way stops on the North Sheridan Way since warrants are not met, and North Sheridan Way is a major collector road with a speed limit of 60 km/h.

Following are the results of the all-way stop warrant calculations for the intersections of Portway Avenue and Stonehouse Crescent at North Sheridan Way.

Portway Avenue	- Part "A" 67.6% Part "B" 87.9%
Stonehouse Crescent	- Part "A" 60.7 % Part "B" 17.5%

No study was conducted at Shawanaga Trail and it was felt that traffic volumes on that road were less than volumes on Portway Avenue and Stonehouse Crescent. Since warrants are not fulfilled at either Portway Avenue or Stonehouse Crescent, it can be deduced that warrants would not be met at Shawanaga Trail.

A warrant for an all-way stop is achieved only if Part "A" and Part "B" are equal to or greater than 100%.

According to Councillor Culham's remarks in his memo, he indicated that the residents contend that stop signs on Premium Way at Dickson Road and Lynchemere Avenue, have gone a long way to regulating speed and discouraging the kind of driver involved in the Mizzi death. The "after" radar surveys which were conducted on Premium Way subsequent to the installation of the two all-way

continued ...

SUBJECT : Safety Hazards in Oakridge Community.

COMMENTS :
continued ...

stops reveal that speeds have not been affected as the 85%-ile speeds recorded in two areas were 63.9 and 66.6 km/h respectively in this existing 50 km/h zone.

It is interesting to note when developing a chart to illustrate the percentage over the speed limit which motorists have been recorded as driving on Mississauga Road, North Sheridan Way and Premium Way where there are two existing all-way stops, the results are very close :

	<u>Speed limit</u>	<u>85%-ile speed</u>	<u>% over posted speed limit</u>
Premium Way	50 km/h	63.9 km/h	28%
Premium Way	50 km/h	66.6 km/h	33%
Mississauga Road	50 km/h	63.6 km/h	27%
Mississauga Road	50 km/h	66.1 km/h	32%
North Sheridan Way	60 km/h	82.9 km/h	38%

As can be seen the values are quite similar in comparing Mississauga Road to Premium Way and slightly higher for North Sheridan Way. From this it can be said that the stop signs on Premium Way have not had a significant influence on speeds on that roadway. We have reported in the past that speeds are only affected within approximately 200 ft. of a stop sign and this is very evident in the case of Premium Way.

Item 5 - There is no signage installed at locations where school buses are picking up students except in front of schools where school bus loading zone signs are erected to legally allow the school bus to stop and pick up or unload children without having to activate the flashers thereby allowing traffic to continue to flow. When buses stop in other areas, they are required by law to activate the flashers, all vehicles must come to a stop, thereby creating a safe situation for the picking up and discharging of children. The Manual of Uniform Traffic Control Devices (M.T.C. Sign Manual)

continued ...

SUBJECT : Safety Hazards in Oakridge Community.

COMMENTS :
continued ...

illustrates a sign indicating school bus stop ahead. The manual outlines this sign is only to be used in advance of a school bus stop if conditions of horizontal, vertical curves or foliage are such that there is less than the minimum safe stopping sight distance. In the case of the school buses operating on Mississauga Road and Stonehouse Crescent, there are no problems of this nature which would justify the use of this sign.

The following comments are submitted in response to the petition received from Oakridge Community :

1. The residents have requested that a paved, well lit foot/bike path be created to link Oakridge Park and Fowler Drive, south of the Robin Drive development.

Staff have reviewed the options for provision of pedestrian access from the Oakridge Community to Fowler Drive. In this regard, a review was made into the feasibility of constructing a lit, paved, pedestrian/bicycle pathway through the landfill site on lands owned by the City (Springbank Road Park) and the Region of Peel.

Based on this review, it appears that a pathway can be constructed over the landfill site. However, it is not feasible to construct an asphalt surface due to constant differential settlement which will cause extensive damage to the surface and necessitate at least annual patching. Therefore, the path should be constructed of gravel with a top layer of limestone screenings. Furthermore, provision of lighting for the pathway will require some special measures and maintenance will have to be done to ensure that the light poles remain vertical and erect.

A preliminary cost estimate for the construction of a gravel path and illumination as shown in Fig. 2 is \$37,000.00.

Alternatives to the path across the landfill site have been investigated and it has been determined that there will be a sidewalk and illuminated route available between this community and Sheridan Mall when the Magic Meadows subdivision is completed.

The route would be along the existing sidewalk on the south side of Mississauga Road, along Seven Oaks Drive and Bussage Place, which are being constructed under the Magic Meadows subdivision. It is currently anticipated

continued ...

SUBJECT :

Safety Hazards in Oakridge Community.

COMMENTS :

continued ...

that Seven Oaks Drive and Bussage Place with a walkway to Fowler Drive, will be completed in late 1984.

There is an existing gap in the sidewalk on Mississauga Road between Springbank Road and the Seven Oaks Drive intersection. There is an existing gravel path, and it is currently anticipated that the sidewalk would be completed in 1984 or 1985 in conjunction with proposed works on Mississauga Road and Springbank Road.

It should be pointed out that the gravel path across the landfill site would also be tied into the completion of Seven Oaks Drive. Attached is a plan (Fig. 2) showing the overall area and the proposed path. Permission from the Region of Peel would have to be obtained for a section of the path.

Also, the walking distances between a point on Portway Avenue at Oakridge Park and Fowler Drive via the road system and via the pathway were very close. The route using Portway Avenue to Mississauga Road, then to Seven Oaks Drive to Bussage Place and Fowler Drive, was approximately 4200 ft. in length whereas the route across Oakridge Park, the landfill site, Seven Oaks Drive and Bussage Place to Fowler Drive would be 3800 ft. in length.

2.

The issue of placing stop signs on North Sheridan Way has been previously discussed under Item 4 in response to Councillor Culham's memo and it is reiterated that the Engineering Department does not support the request to place stop signs on the North Sheridan Way.

3.

School signs are placed only in school areas and a review of the area indicates that school symbol signs are in place on Stonehouse Crescent facing traffic in both directions in advance of Oakridge P.S. A 40 km/h speed limit exists on Stonehouse Crescent and all signing is in place.

On Mississauga Road there are two school crossings, one at Shawanaga Trail and one at High River Court. Both of these painted crossings are signed with advance school crossing signs (facing both directions) and school crossing signs located at the crosswalk. Also Crossing Guards operate at both crossings and as previously mentioned, no problems are encountered by the guards at these two locations.

continued ...

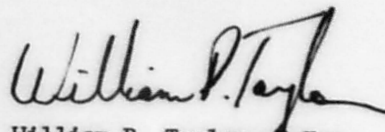
SUBJECT : Safety Hazards in Oakridge Community.

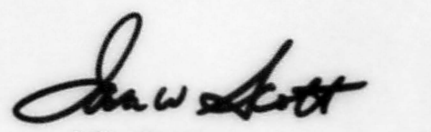
COMMENTS :
continued ...

There also exists a 40 km/h speed zone on Mississauga Road from High River Court just west of Shawanaga Trail and signing is in place for that speed zone.

WATCH FOR CHILDREN signs are reserved for placement only at parks or playgrounds where children regularly congregate. Signs to that effect are present on Portway Avenue adjacent to Oakridge Park. We support the erection of these signs only in the locations noted above which are according to M.T.C. guidelines. It can be assumed that in any residential subdivision there are children present and we cannot undertake to sign a number of areas throughout the subdivision on a City-wide basis which is not in accordance with M.T.C. signing principles.

- RECOMMENDATIONS :
1. That the joint report from the Commissioners of Recreation and Parks, and Engineering and Works, dealing with residents concerns in the Oakridge Community, dated December 19, 1983, be received.
 2. That all-way stop signs not be installed at any location on the North Sheridan Way between Mississauga Road and Springbank Road.
 3. That the Peel Regional Police be requested to continually enforce speed limits on North Sheridan Way and Mississauga Road in the Oakridge Community.
 4. That the construction of an illuminated gravel pathway from the proposed walkway between lots 49 and 50 in the Magic Meadows Plan of Subdivision to Springbank Road, at an estimated cost of \$37,000.00, be included in the 1984 Recreation and Parks Department Capital Budget for consideration and if approved, that the works be undertaken upon completion of Seven Oaks Drive sidewalk by the developer.


William P. Taylor, P.Eng.,
Commissioner,
Engineering and Works Dept.


I.W. Scott,
Commissioner,
Recreation and Parks Dept.

Att.
cc : E.M. Halliday

:DTJ:jb

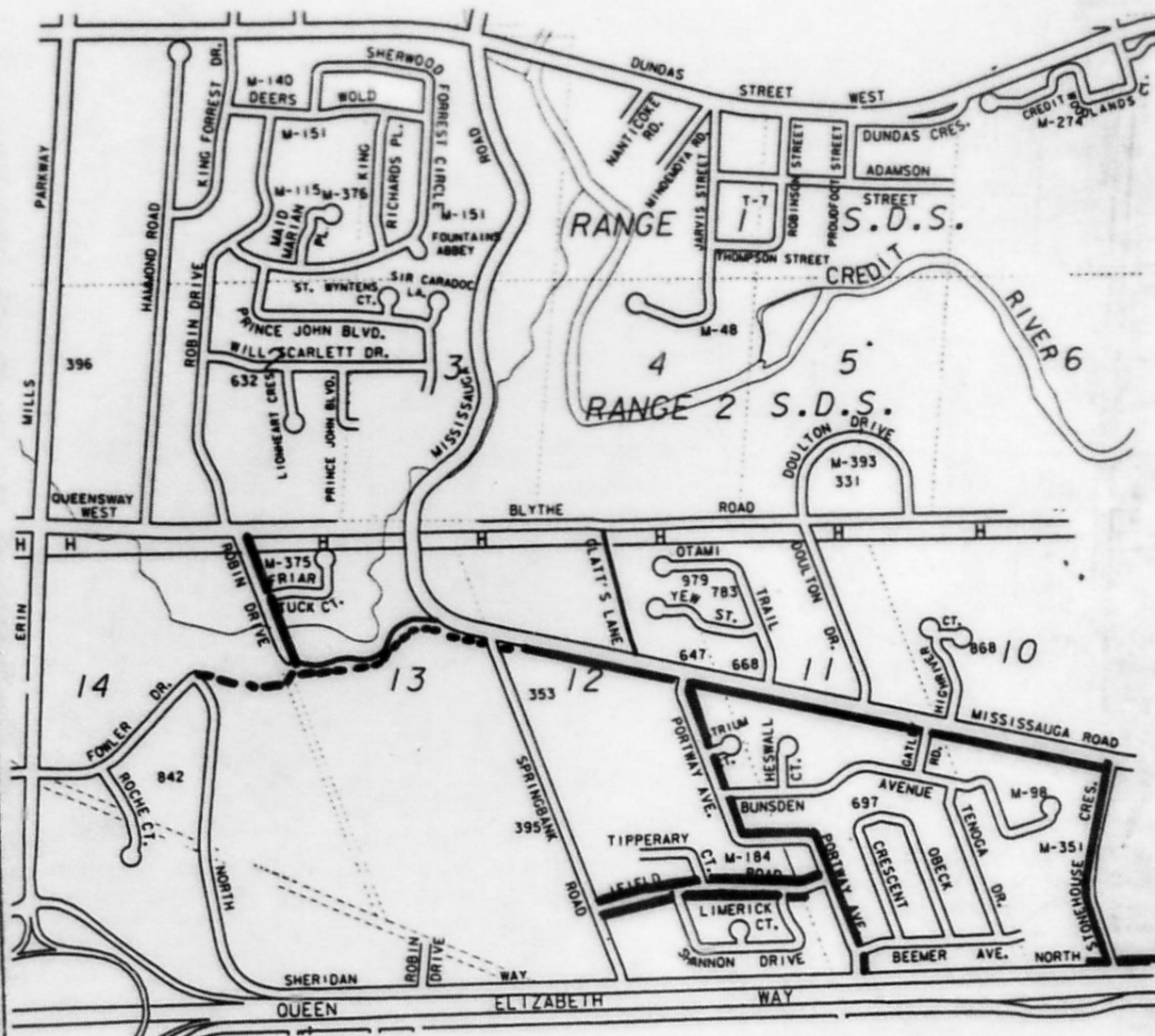


FIG. 1.

— EXISTING SIDEWALKS
 --- FUTURE SIDEWALKS

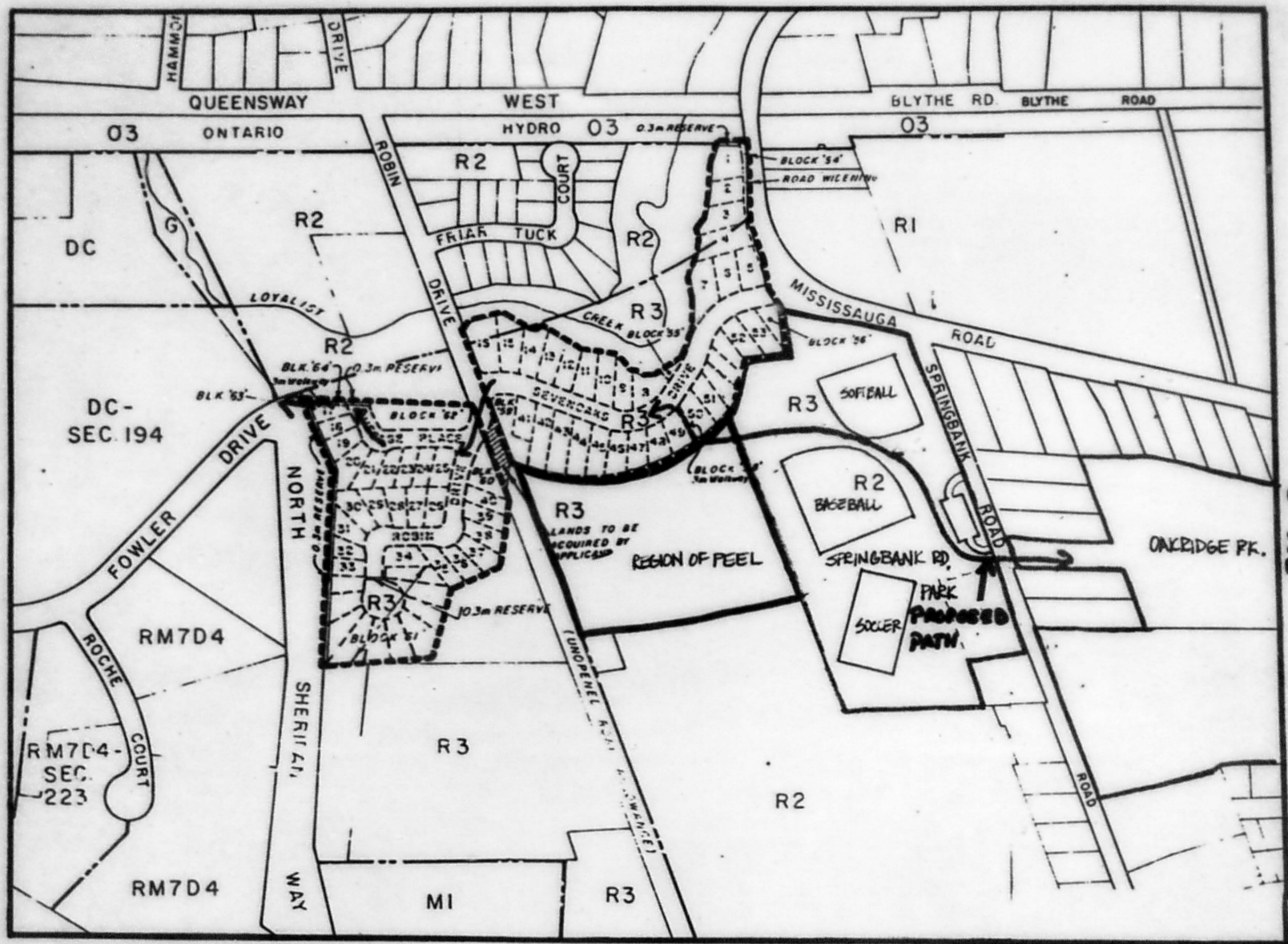


Fig. 2.

C. A. DATE PAW 14/83

David J. Culham,
Councillor, Ward 6,
City of Mississauga,
1 City Centre Drive,
Mississauga, Ontario

Dear Mr. Culham:

Further to our community meeting of Oct. 17, 1983 and our recent telephone conversation, I am writing to:

- review the steps being taken to address the outlined problems
- forward the petition results

Within a 6 day period, a group of concerned parents obtained a total of 456 signatures in response to the petition request. This indicates that the residents of Oakridge are deeply concerned about safety hazards in this community.

It is my understanding that:

1. the planning and engineering departments will be conducting traffic studies to determine the feasibility of locating the foot-bike path in the proposed area.
2. the traffic engineers and planners with input from the traffic safety committee will be doing comparative studies between The Premium Way and the North Sheridan Way. (It is important to re-emphasize that this recommendation on the petition should apply to both the North Sheridan Way and Mississauga Road.).
3. the overall study will include the need for additional cautionary school signs (e.g. North Sheridan Way/Stonehouse).
4. Mississauga Police Inspector McDonald has been contacted regarding the irregular (Mississauga Road) and non-existent (North Sheridan Way) speed monitoring and enforcement on the two major arteries in this community.

! REFERRED TO: W.TAYLOR FOR REPORT
! TO GENERAL COMMITTEE
! REQUEST FOR REPORT 217-83

2/.....

The Oakridge Ratepayers' Association is fully supportive of this action and have requested that this safety committee become an arm of the association.

I want to thank you for the investigative action that has been initiated and for your assurance that results from these evaluative studies will be received before the end of November 1983.

I look forward to our meeting at that time.

Yours truly,

Sherry Ardell

Sherry Ardell

SA/kem

cc to:

* Mayor McCallion
* Mr. B. Burrows - Police Chief, Peel County
* Mr. R. Simon - President, Oakridge Residents Assoc.
Mr. Tom McAuliffe
Ms. Elizabeth O'Kelly
Arthur Grannum, Traffic Safety Com.
Mr. I.W. Scott, Commissioner Parks & Recreation
Mr. R. Edmunds, Commissioner of Planning
Mr. W.P. Taylor, Commissioner Engineering & Works

*copies of petition have been forwarded
to those marked **

TO: THE COUNCIL
CITY OF MISSISSAUGA
AND TO: THE CHIEF
PHEL REGIONAL POLICE DEPARTMENT

THE UNDERSIGNED RESIDENTS OF THE OAKRIDGE AREA IN THE CITY OF MISSISSAUGA WISH TO BRING TO YOUR ATTENTION THE FOLLOWING MATTER OF URGENT CONCERN RESPECTING THE SAFETY AND WELL BEING OF CHILDREN AND OTHERS IN THIS AREA

1. The total absence of reasonable and safe access in and out of the area except by private motor vehicle.
2. The deficiency cited in Number 1 creates unreasonable and unnecessary hazards to the everyday lives of children and others in the Oakridge area as follows:
 - children bussed to senior public and secondary schools outside Oakridge are unable to participate in normal after school activities because there is no safe way of returning home.
 - normal community services located solely outside Oakridge (shopping, banking, post office, library, etc) are only accessible by private motor vehicle.
 - exercise through walking, jogging and bicycling is made unreasonable and hazardous by traffic dangers.
 - public transit (bussing, GO Train) is inaccessible due to its remoteness and absence of safe access routes.

THE UNDERSIGNED RESIDENTS THEREFORE URGE YOU TO CONSIDER AND TO IMPLEMENT AS QUICKLY AS POSSIBLE THE FOLLOWING RECOMMENDATIONS TO ENSURE THAT MINIMUM SAFETY STANDARDS PREVAIL IN THE OAKRIDGE AREA:

1. That a paved well lit foot-bike path be created to link Oakridge Park and Fowler Drive, south of the Robin Drive development.
2. That speeding problems be rectified by stop signs on the Service Road (e.g. Stonehouse Rd., Shawanaga Trail and Portway Ave.) and speed limit monitored and enforced.
3. That "Watch For Children" and school signs be placed in appropriate areas throughout the subdivision.

PETITION INCLUDES APPROXIMATELY 456 SIGNATURES OF RESIDENTS OF:

Highriver Court
Doulton Drive
Blythe Road
Beemer Avenue
Obeck Crescent
Springbank Road
Glatt's Lane
Stonehouse Crescent
Otami Trail
Heswall Court
Tenoga Drive

Mississauga Crescent
Mississauga Road
Kawartha Crescent
Ifield Road
Shawanaga Trail
Abbotswood Court
Yew Street
Gatley Road
Geran Crescent
Saxony Court
Fleet Street
Bunsden Avenue
Chippewa Trail
Portway Avenue
Atrium Court
Shannon Drive
Limerick Court
Tipperary Court



MEMORANDUM

RECEIVED FILE

OCT 24 1983

To: I. W. Scott, Commissioner/Rec & Parks
R. Edmunds, Commissioner/Planning
Dept. W. P. Taylor, Commissioner/Eng. & Works

From: David J. Culham
Councillor Ward 6

Route To	Initials	Date
H.A.T.		

October 21, 1983

Re: Oakridge Neighbourhood

On receipt of a letter from Mrs. Law of 2038 Portway with respect to traffic safety in the Oakridge community, I sent memos and was in personal contact with Rick Doyle and John Thomas. Traffic studies are underway and John Thomas has got in touch with the Peel Police as to traffic surveillance on the North Sheridan Way. Rick Doyle is getting back to me with respect to pedestrian access points across to the Sheridan Mall area.

However, as a result of a meeting in the community on October 18th, it would appear to me that there must be a coordinated effort on the part of all three departments to deal with the overall pedestrian movement planning and the relationship of the proposed walkway across the North Sheridan landfill site within the context of this overall community concern. Several points were made:

1. Despite all of the efforts of staff over the last several years, speeding on Mississauga Road and the North Sheridan Way is chronic. From my own experience, I am constantly being passed on these roads as I drive through the community.
2. While some may feel that the recent barrier guards on the North Sheridan Way between Stonehouse and Shawanagan were placed as a result of the Mizzi death, the people at the meeting are aware that this is not the case and that the City has responded over the last year and a half to the concerns of residents. However, they feel that the sight lines are not large enough at Stonehouse and Shawanagan to afford safety to the children. It seems to me that this should be studied in detail and that it may be necessary to look at the real needs at these two intersections. In this same regard, there is a concern for the crossing of the children at Shawanagan and Mississauga Road.
3. It is the general consensus that there is excessive vehicular movement on Stonehouse in the morning both because of adults driving their children to school and because of the movement of buses themselves.

2....

4. It is the opinion of the residents, supported by petitions which will be received shortly, that serious consideration be given to the placement of stop signs along the North Sheridan Way, similar to those of Premium Way and on the North Service Road in the Applewood area. Residents contend that stop signs in this area have gone a long way to regulating speed and discouraging the kind of drivers involved in the Mizzi death.
5. Residents are concerned that there is inadequate signage at the various school bus stops along Mississauga Road and on Stonehouse close to the school. The overall signage for student pedestrian and pedestrian movement generally is of concern and should be investigated.

It is in this overall context that the walkway across the Sheridan site is proposed by the residents.

In the past, we have dealt with the Mississauga Road traffic problem, the sidewalk, snow plowing and pedestrian safety on Mississauga Road, and the North Service Road as isolated items to be investigated. It seems to me that what is required is an integrated, neighbourhood approach that combines the disciplines of all three departments. It is in that context that I would appreciate the report.

John Thomas has contact the Police Department but the response was not noticeable by the residents. The Mizzi death has only focused a lingering concern held by people with children. I would appreciate personal initiative to the police to make a special effort on prosecutions on both these roads over the next three to four month period.

David

David J. Culham
Councillor Ward 6

DJC:kd

cc: Mayor McCallion
Inspector McDonald
E. M. Halliday
Mrs. Law
B. Simon
S. O'Neill

(c) That the renaming of the north/south portion of Matheson Boulevard East (Shown as "B" on the sketch attached to the report dated March 31, 1983, from the Commissioner of Engineering and Works), be referred to a meeting of the Public Works Committee to be held with the owners of the lands affected by the renaming and that three names be suggested to these owners, one of which should be "SATELLITE", at the time they are invited to attend the Public Works Committee Meeting and that they be given an opportunity to make alternative suggestions.

(d) That (a) above not take effect until after the recommendation emanating from (c) above has been adopted by Council.

The next meeting of the Public Works Committee will be held on Tuesday, December 20, 1983, at 9:30 a.m. in the Council Chambers on the Main Floor of City Hall, 1 City Centre Drive. The renaming of the north/south portion of Matheson Boulevard East will be considered at that time and you are cordially invited to attend to present your views to the Committee. Although "SATELLITE" is a name that has been suggested, other names can be considered at the meeting on December 20th.

If you are unable to attend this meeting and would like to submit your thoughts in writing to the Committee, it would be appreciated if these could be in this office by Thursday, December 15, 1983. If you have any questions please do not hesitate to contact Mr. W. P. Taylor, P. Eng., Commissioner of Engineering and Works, 279-7600, Ext. 340, or me at 279-7600, Ext. 594.

Yours very truly,

Christine Dodds

Christine Dodds (Mrs.)
Committee Co-Ordinator.

Encl.

c.c. Councillor Frank McKechnie

1493C/106C

December 14, 1983

I just want to take this time to enquire as to who is going to absorb the cost for the companies on the portion to be renamed?

It's not as easy as snapping your fingers to have the street you have been situated on for several year all of a sudden change its name. I know that I have same stationary which will last for the next couple of years and I definitely would not appreciate having to change.

Also, I have yet to understand the purpose of giving "east" or "west" to a street address. The main question is east or west of what? I know I have had trouble finding an address on Dundas because of this east or west. And with a street as large as Dundas or Eglinton just think of how many easts and wests you can have. If you say to me Eglinton West I immediately think of West of Yonge Street but I know it could also mean out in Mississauga. Why not just start numbering at one end and proceed naturally upward?

GRAPHIC LINE-A-TONE
COMPANY LIMITED

1515 MATHESON BLVD. UNIT 9B
MISSISSAUGA, ONTARIO L4W 2P5

DEC 19 1983

McKechnie

400 homes involved Council promotes recycling project

By MARINA STRAUSS

A newly formed group of manufacturers says it can create 1,100 new jobs in Ontario recycling garbage if the Government will let it use products such as aluminum for beverage containers.

A pilot project in Burlington, Ont., will be launched today to show that consumers can get into the habit of recycling their soft drink, food containers, beer cans, bottles, jars and newspapers. The project, sponsored by the Recycling Support Council, will involve 400 selected householders.

People must be persuaded to separate newspapers, bottles and cans in containers for separate pick-ups and recycling so that the Ontario Government will back a recycling program, said Timothy Porter, a spokesman for the group.

Half of the potential jobs may go to hard-to-employ workers or the handicapped, he said.

Environmental protection laws discriminate against aluminum companies because the legislation insists that steel be used for beverage cans, except the aluminum tops, Mr. Porter said. "We just want to compete in the marketplace."

"We feel the Ontario Govern-

ment is looking with some sympathy to containers that will be recycled even if they won't be refilled," he said.

Alcan Canada Products Ltd., a member of the recycling council, has spent about \$1-million in research and preparation for the recycling project, Mr. Porter said.

The council also includes Twinpak Ltd., Ontario Paper Co. and the Glass Container Council of Canada, representing Consumers Glass Co. Ltd. and Domglas Inc.

Allan Wakefield, who heads the new council, said the program could see household materials now being recovered in Ontario increase sixfold.

Ontario recovers about 50,000 tons of residential waste a year, largely because of the pioneering efforts of Ontario Paper, Mr. Wakefield said. Landfill sites "have become a nightmare" for municipalities, he said.

"By getting the manufacturers and recycling companies to work together, we can see recovering easily six times this amount given the right conditions across Ontario."

Mr. Porter said the recyclable containers could cut down landfills by 10 per cent.

REGIONAL MUNICIPALITY OF WATERLOO

Engineering Report

File Ind. Waste-Gen.
Landfill-Cam., Wat.

E. R. 83-60 ✓

Subject: REGIONAL SPONSORSHIP OF A DOMESTIC SPECIAL WASTE DAY

TO: Chairman Marjorie Carroll and
Members of the Engineering Committee

DATE: Thursday, March 17, 1983

RECOMMENDATION:

- (1) That the Region of Waterloo sponsor a day each Spring for the disposal of special wastes delivered to the Waterloo and Cambridge Landfill Sites by householders.
- (2) That the Region notify the public that disposal days, namely May 14 at the Waterloo Landfill Site and May 28 at the Cambridge Landfill Site will be available in 1983.
- (3) That the services of Mosaic Chemical Company be retained at an approximate cost of \$3,500 per day to perform the necessary classification, packing and ultimate disposal services.
- (4) That the estimated \$8,500 for a two day program be funded from the 1983 Contingency account.
- (5) That the entire program be contingent on receiving approval from the Ministry of the Environment.

SUMMARY:

Households normally have small volumes of special wastes or potentially hazardous materials in storage. Since satisfactory means of disposal for these materials has not been established, they find their way into the landfill via regular garbage collection or alternatively, to the sanitary sewer. Provision of access to a licenced hazardous waste disposal company will give residents a suitable disposal option.

Continued P2

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REPORT:

The Region of Waterloo is prohibited from taking flammable, hazardous or liquid wastes in its landfill sites. Small volumes of these wastes are normally disposed of by householders.

Suitable disposal methods are not available for householders except at exceptional cost. These methods are not well known to the householder in any event.

The subject of portable transfer stations at municipal landfills has been discussed with the Ministry of the Environment and approval is pending. The materials received at landfill would be inspected, classified and removed from the site for proper disposal or recycle.

The Mosaic Chemical Company is a licensed hauler of hazardous materials and have a site in Mississauga where the wastes would be separated and repacked as necessary. Those wastes with reclaimable solvents would be recycled.

The wastes brought to landfill would be unloaded by Regional employees. The wastes would then be transferred by pick-up trucks to a classification area 100 yards away. The classified wastes would be packed in a trailer located 100 feet from the classification area.

The wastes would be handled by employees of Mosaic after being unloaded from cars by Regional employees. The distances are recommended for safety. The area fire departments have been contacted and have offered to have manned vehicles available at the sites. In addition, professional management staff will be supplied by the Mosaic consortium at no cost to the Region.

The cost estimate per site is:

2 Chemists for waste classification	\$ 560
4 Truck Drivers from Thomas Waste Disposal	\$1,120
Rental of tractor and 40' trailer	\$ 542
Unloading and consolidation of wastes	\$ 386
Drums for packing wastes for transport	\$ 425
Regional employees and vehicle	\$ 217
Promotion	\$ 500
TOTAL	\$4,250.

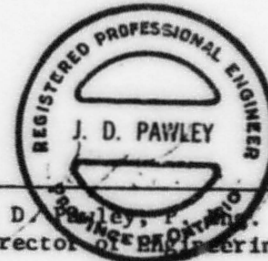
This is an estimate allowing for one trailer load of waste (2,000 gal.) and may vary upwards if there is an exceptional public response. There was no provision for this program in the 1983 budget. Hence, the program cost would come from the 1983 Contingency account.

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R. W. Luhowy

R. W. Luhowy, C.E.T.
Manager, Technical Services



J. D. Pawley, P. Eng.
Director of Engineering Operations



Clare Bauman, P. Eng.
Commissioner of Engineering

THE FOLLOWING ATTENDED THE PUBLIC WORKS
COMMITTEE MTE - DEC 20, 1983.

NAME	COMPANY	
R. Ledrew	Economy Ceilings Co. Ltd.	1616 Main. Unit 13
Ross McConnell	Gateway Reproductions Ltd.	1590 Main. Unit 5
Ken Gilman	Indusfood Inc.	Unit 22 1590 Main. L4W 1J1
Truman Kodaira	Elion Enterprises Inc. 624-4536	ELION 1590 Main. Unit 8.
Darshan Singh	STRIEDL OFFSET SERVICES.	Unit 12 1616 Main. L4W 1R9
Erud Dohans	BELLOWS LITHO LTD.	1590 Main. Unit 10. L4W 1J1
Margaret Miller	TODAY'S BUSINESS PRODUCTS LTD.	1785 Main.
F. G. Shortreed	✓	✓ L4W 1V2.